JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT

Before:
Mr. Justice Riazat Ali Sahar

Revision Application No. 37 of 2024

Muhammad Irfan

Versus

M/s Hassan Construction and Others

Applicant by:	Mr. Khalid Mustafa Shoro, Advocate.
Respondent No. 1 by:	Mr. Tahir Nisar Rajput, Advocate.
Respondents Nos. 2 to 6 by:	Mr. Muhammad Ismail Bhutto, Addl. Advocate General Sindh.
Date of Hearing:	26-05-2025
Date of Judgment:	02-06-2025

JUDGMENT

Riazat Ali Sahar, J: The Applicant, Muhammad Irfan, filed a civil suit, being F.C. Suit No. 913 of 2016, titled *Muhammad Irfan v M/s Hassan Construction Co. Builders and Developers and others*, before the learned Senior Civil Judge-IV, Hyderabad, for declaration, damages, specific performance of contract, recovery of arrears and permanent and mandatory injunction. His plea in the said suit was that the Respondent No. 1 floated a scheme in the name of *Oasis Apartments* over Plot No. A1-20, Kohsar Housing Scheme, DHA, Latifabad, Hyderabad[1], in which, the Plaintiff booked a flat bearing No. S-7[2] for the consideration of Rs.19,00,000/- (rupees nineteen lac only) which was paid by him. He claimed that, although it was agreed that the possession of the apartment shall be handed over to him within one year, this was not done, and, in

[1]"the scheme"
[2]"the apartment"

violation of conditions of the agreement between the parties, the Respondent No. 1 was/is liable to pay Rs. 5,000/- per month from 01.01.2012 to 30.10.2014. As per his plea, the possession of the apartment while it was incomplete was handed over to the Applicant without a possession letter; hereupon, the Respondent No. 1 requested the Applicant to make the apartment habitable at his expense which will be reimbursed to him by the Respondent No. 1. The Applicant claimed that, to do so, he spent a sum of Rs. 1,64,660/- (rupees one lac sixty-four thousand six hundred and sixty only) on the apartment in the following manner:

Work	**Material Costs**	**Labour Costs**	**Total**
Plumbing	Rs. 20,880/-	Rs. 4,000/-	Rs. 24,880/-
Electrical Work	Rs. 19,780/-	Rs. 3,000/-	Rs. 22,780/-
Grill	Rs. 16,000/-	Rs. 2,000/-	Rs. 18,000/-
Paint work	Rs. 76,000/-	Rs. 25,000/-	Rs. 1,01,000/-
TOTAL:			**Rs. 1,64,660/-**

The Applicant alleged that he repeatedly approached the Respondent No. 1 for issuance of the possession letter and execution of registered sale deed as well as recovery of rent dues and the expenses incurred by him as mentioned above, however, he was kept on false hopes. The Applicant thus served Legal Notice dated 05.04.2016 upon the Respondent No. 1 which was not replied. It is further alleged that the Respondent No. 1 violated the terms and conditions of the NOC issued by the official respondents and constructed a fourth floor over the scheme putting the lives of the inhabitants in danger and it also failed to provide fire extinguishing systems and water hydrants on all convenient places in the scheme. Based on these pleadings, the Applicant drove his cause of action and claimed the following reliefs:

"**PRAYER**

a. That, this Honourable Court may be pleased to declare that the acts of defendant No. 1 to construct the fourth floor over the project, selling the roof of the project and failure to

provide the fire extinguishing system besides water hydrants at all convenient places for the project are illegal and unlawful, void, ab-initio and fourth floor of project is liable to be removed.

b. That this Honourable Court may be pleased to issue mandatory injunctions whereby direct the defendant No. 3 to demolish the fourth floor over the Oasis Apartment.

c. That, this Honourable Court may be pleased to issue the permanent injunction whereby direct the defendant No. 1 not to sell the roof of project.

d. That, this Honourable Court may be pleased to direct the defendant No. 1 to pay Rs. 1,64,660/- incurred in maintenance of flat purchased by plaintiff, which ought to be spent by the defendant No. 1.

e. That the defendant No. 1 be directed to pay Rs. 1,75,000/- alongwith markup, charges of delaying possession as per condition No. 2 of agreement.

f. That the defendant No. 1 may further be directed to hand over the occupancy/possession certificate and to get Registered Sell Deed in favour of plaintiff, in case of refusal the Nazir of this court may be appointed on behalf of defendant No. 1 to get Registered Sell Deed in favour of plaintiff.

g. That this Honourable Court may be pleased to direct the defendant No. 1 to hand over the possession of roof of Oasis Apartment to the inhabitant of the project and provide the fire extinguishing system both sides of each floor and stairs/lifts besides adequately connected water hydrants at all convenient places for the project.

h. Costs of the suit may be saddled upon the defendants.

i. Any other relief(ves) as this Honourable Court may deems fit and proper in the circumstances of the case."

2. Against the suit, the Respondent No. 1 filed its written statement and denied the case pleaded by the Applicant. The Respondent No. 1 stated that the Applicant failed to pay the complete amount of the sale consideration as a result of which the Respondent No. 1 had already issued notice of cancellation of agreement to the Applicant; that the Applicant forcibly occupied the possession of the apartment without making all payment to the Respondent No. 1; that the development charges of Rs. 1,64,660/- as claimed would be paid after completion

however the Applicant failed to pay the amount of consideration of the disputed apartment; that no notice has been issued by the Applicant; and that no cause of action accrued to the Applicant. The Respondent No. 1 denied the maintainability of the Applicant's suit.

3. From the pleadings of the parties, the learned Trial Court framed eight (8) issues which were later amended. The issues framed by the learned Trial Court are:

i. Whether suit is not maintainable?

ii. Whether the plaintiff has paid total sale consideration of suit Flat bearing No. S-7, Oasis Apartment, Kohsar, Latifabad, Hyderabad, to defendant No. 1?

iii. Whether the defendant No. 1 has handed over the possession of incomplete flat to plaintiff?

iv. Whether the plaintiff has incurred the cost of Rs. 1,64,000/- on his own on completion of the flat?

v. Whether the defendant No. 1 has violated the terms and conditions of NOC by constructing further floor over the project and sold the roof of the project?

vi. Whether the defendant No. 1 had issued notice to plaintiff for cancellation of agreement, due to default in payment the amount of sale agreement?

vii. Whether the plaintiff is entitled for any relief?

viii. What should the decree be?

4. At the trial, the Applicant examined the following witnesses:

i. **PW-1** Jameel-ur-Rehman, Assistant Director, Sindh Building Control Authority (SBCA), Hyderabad **(Exh-P/72)**, who was examined on Oath, and produced Authority Letter **(Exh-P/72-A)**, No-Objection Certificate by SBCA **(Exh-P/72-B)**, Stability Certificate **(Exh-P/72-C)** and Structural Drawing **(Exh-P/72-D)**.

ii. **PW-2** Azeemuddin Ansari, Associate Engineer, Litigation Commissioner appointed by the learned Trial Court **(Exh-P/74)**, who was examined on Oath, and produced Report dated 18-05-2020 **(Exh-P/74-A)** and photographs **(Exh-P/74-B to 74-P)**.

iii. **PW-3** Muhammad Irfan, the Applicant **(Exh-P/76)**, who was examined on Oath, and produced photocopy of No-Objection by SBCA (original already having been produced) **(Exh-P/76-A)**, original Terms and Conditions of Agreement **(Exh-P/76-B)**, original Allotment Order dated 01-01-2011 **(Exh-P/76-C)**, six (6) receipts of payment dated 30-12-2010, 06-03-2011, 27-07-2011, 17-05-2012, 17-02-2013 and 27-03-2013 **(Exh-P/76-D to P/76-I)**, receipts of Expenditure dated 10-11-2014, 12-12-2014, 22-02-2014, 05-01-2015, 20-01-2015 and 15-02-2016 **(Exh-P/76-J to 76-O)**, copy of Legal Notice dated 05-04-2016 **(Exh-P/76-P)**, Complaint addressed to Respondent No. 3 **(Exh-P/76-Q)**, original Letter dated 24-10-2018 for possession of the apartment **(Exh-P/76-R)** and original copy of No-Dues Certificate dated 24-10-2018 **(Exh-P/76-S)**.

iv. **PW-4** Attaullah Khan son of Gul Muhammad Khan**(Exh-P/77)**, who was examined on Oath, and did not produce any document.

v. **PW-5** Kamran son of Sharfuddin **(Exh-P/77)**, who was examined on Oath, and did not produce any document.

However, the Respondents Nos. 1 and 3 to 5 did not record their evidence despite being provided opportunities. Ultimately, their side for evidence was closed by the learned Trial Court.

5. The learned Senior Civil Judge finally passed a Judgment dated 08.03.2021 and Decree dated 10-03-2021[3] and decreed the suit of the Applicant in the terms mentioned therein. Against the Trial Judgment, two cross-appeals, being Civil Appeal No. 94 of 2021, titled *M/s Hassan Construction Co. Builders and Developers v Muhammad Irfan and others*,

[3]Collectively referred to as "Trial Judgment"

and Civil Appeal No. 97 of 2021 titled *Muhammad Irfan v M/s Hassan Construction Co. Builders and Developers*, were filed respectively by the Respondent No. 1 and the Applicant. Both the said appeals were dismissed vide Judgment and Decree dated 24.10.2023[4] by the learned Additional District Judge-VIII, Hyderabad.

6. This case has now come up before me as a revision application under s. 115 of the Civil Procedure Code, 1908[5], with the following prayer:

> "…after calling the R&Ps and perusal thereof and hearing the parties examining the legality, propriety and correctness of both decrees set aside the Appellate Court's decree and decree of the Learned Trial Court to the extent of partly dissatisfaction, by allowing the Revision Application allow/decree the suit of applicant as prayed…"

7. The grounds raised in the revision application and also advanced during the hearing by, Mr. Khalid Mustafa Shoro, learned Counsel for the Applicant, are that both the Judgment and Decrees impugned are without jurisdiction and they are the result of misreading and non-reading of evidence; that the learned Courts below failed to consider the evidence of the witnesses; that the Applicant has proved his case through cogent and convincing evidence; that the learned Courts below erred in not appreciating that the Respondent No. 1 has clearly violated the terms and conditions of the agreement between the parties; and that the learned Trial Court erroneously held that the Applicant did not deposit the amount within time. Learned Counsel also relied upon *K. A. H. Ghori v Khan Zafar Masood*[6],*Muhammad Khan v Mst. Hajiran Khatoon*[7], *Ghulam Rasool v Muhammad Saleem*[8], *Messrs Norwich Union*

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[4]Collectively referred to as "Appeal Judgment"
[5]"CPC"
[6]PLD 1988 Karachi 460
[7]1984 CLC 3172 (Karachi)
[8]2002 CLC 1770 (Karachi)

Fire Ins. Society Ltd., Karachi v Messrs Zakaria Industries, Karachi[9], *Abdul Karim v Abdul Hamid*[10], and *Mst. Saleema Begum v Aulad Ali Shah*[11].

8. Mr. Tahir Nisar Rajput, the learned Counsel for the Respondent No. 1 opposed this application and submitted that the same is not maintainable in law; that the grounds advanced are not sufficient to disturb the findings of the learned Trial Court; and that the application may be dismissed with costs.

9. Heard. Perused.

10. Undeniably, the Applicant has challenged concurrent findings of facts before this court in its revisional jurisdiction. The foremost question therefore to be decided is regarding the scope of s. 115 of the CPC, the section under which this application has been filed. The question right now before me is whether I can disturb concurrent findings in my revisional jurisdiction or not. For convenience, I reproduce s. 115 of the CPC below:

> **"115. Revision:**
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> (1) A High Court may call for the record of any case which has been decided by any Court subordinate to that High Court and in which no appeal lies thereto, and if such subordinate Court appears:
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> (a) to have exercised a jurisdiction not vested in it by law; or
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> (b) to have failed to exercise a jurisdiction so vested; or
>
> (c) to have acted in exercise of its jurisdiction illegally or with material irregularity,
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> the High Court may make such order in the case as it thinks fit:
>
> PROVIDED THAT where a person makes an application under this sub-section, he shall, in support of such application furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for

[9] 1994 CLC 1280 (Karachi)
[10] 1988 CLC 2009 (Karachi)
[11] PLD 1981 SC (AJ&K) 128

reasons to be recorded, dispose of such application without calling for the record of the subordinate Court;

PROVIDED FURTHER THAT such application shall be made within ninety days of the decision of the subordinate Court which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.

(2) A District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to that District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If an application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Corut against an order made under sub-section (2) by the District Court."

11. On a plain reading of S. 115, it becomes clear that it is not at par with provisions concerning appeals, i.e. Sections 96 and 100 of the CPC. I must concede, on first sight, revisional jurisdiction does not permit revision of judgments or orders beyond the scope of S. 115 (1) (a) to (c) of the CPC and it does not permit a full-blown appraisal of evidence or facts. However, that does not mean that S. 115 is not subject to interpretation. Its interpretation and scope must be looked at in the light of two important factors, which I shall briefly attend to.

12. The first aspect to consider is that revisional jurisdiction is special in its character in the sense that it confers *suo motu* power upon a High Court and a District Court to revise orders or judgments of subordinate courts in addition to it being exercisable upon application by an aggrieved party[12].The second important aspect also concerns the nature of S. 115. Under settled principles of statutory interpretation, the word "shall" is used to convey a clear mandate and, wherever it is used, the

[12]E.g., *Muhammad Din v Muhammad Amin* PLD 1995 Lahore 15

provision is treated as a mandatory one which must necessarily be complied with. However, the usage of the word "may" conveys a discretionary power which is to be exercised by a functionary under legitimate circumstances, fairly and judiciously. When S. 115 of the CPC is read, it is seen that the word "may" is used, which *ipso facto* means that the provision is a discretionary one. The revisional jurisdiction of a High Court, therefore, is a discretionary authority and it does not really confer a substantive right upon an applicant or a party. What it, however, does is that it saddles a duty upon a High Court (and a District Court for all that matters) to exercise revisional jurisdiction effectually, fairly, judiciously and in a way which permits full and complete justice to be done. For this purpose, S. 24A(1) of the General Clauses Act, 1897 offers a good foundation:

> "**24A. Exercise of power under enactments:** (1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment."

13. As such, Courts have been creative in understanding S. 115 of the CPC and have found room for entertaining revisions on factual and evidentiary grounds under exceptional circumstances, where the order or judgment under revision is based on no evidence or on inadmissible evidence or it is so manifestly perverse that not interfering would result in injustice. One must take into account that, in conferring jurisdiction, the law always and invariably, even if not expressly, assumes that such jurisdiction will be exercised by the authority or a court in a correct manner, i.e. by rightly appreciating the evidence and the law. It must therefore be understood that an order of a court which is manifestly wrong on facts/evidence and is on the contrary based on misreading or non-reading thereof is obviously an order without jurisdiction. Similarly an

order of a Court in which it misapplies a law, be it statutory law or case law, or does not apply an essential principle or statutory provision at all, cannot be treated as an order passed in line with that Court's jurisdiction. Thus, in *Nazim-ud-Din v Sheikh Zia-ul-Qamar*[13], the Supreme Court of Pakistan held that:

> "It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in exercise of its jurisdiction illegally or with material irregularity."

14. In another case, *Sultan Muhammad v Muhammad Qasim*[14], the Supreme Court made a similar holding. It observed:

> "17. Indeed, the concurrent findings of three Courts below on a question of fact, if not based on misreading or non-reading evidence and not suffering from any illegality or material irregularity effecting the merits of the case, are not open to question at the revisional stage, but where on record the position is contrary to it, then revisional Court in exercise of its jurisdiction under section 115, C.P.C. or this Court, in exercise of jurisdiction under Article 185(3) of the Constitution, are not denuded of their respective powers to interfere and upset such findings."

15. A similar view is given in *Malik Muhammad Khaqan v Trustees of the Port of Karachi (KPT)*[15]. There, it was held that:

> "3. …This Court has consistently held that when finding of the facts of the trial and Appellate Courts are contrary to the evidence and material on record or are against law then the revisional Court would have jurisdiction to rectify the same so as to bring the findings in consonance with the evidence on record or to remove the illegality surfacing from the judgment. Similarly if the revisional Court finds any violation of provision of law by a Court or ignorance of law then it is vested with the authority to set aside the concurrent findings and substitute its own findings."

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[13] 2016 SCMR 24
[14] 2010 SCMR 1630
[15] 2008 SCMR 428

16. If I have understood correctly, the findings of two courts which are concurrent on facts do deserve respect in the sense that two judicial minds come together to reach the same conclusion. The possibility of not one but two judges erring on the same count and sharing the same erroneous conclusion is rare but in no way can concurrent findings be treated as being set in stone. There are without a doubt many cases where two courts of law misread or fail to read the facts of a case properly and so the principle respecting concurrent findings may be departed from. When interference is needed, it must be done without hesitation but strictly in line with the settled principles of law.

17. I have applied these principles to this case, and it appears that the findings of both the Courts below on all the issues are consistent with the facts and the law. The findings on Issue No. 5 are, however, doubtful and require consideration by this Court. For reference, and at the cost of some necessary repetition, Issue No. 5 reads:

> "Whether defendant No. 1 has violated the terms and conditions of NOC by constructing the further floor over the project and sold the roof of the project?"

This issue was framed in respect of Prayer Clauses (a), (b), (c) and (g).

18. The learned Trial Court was of the opinion that, since the Plaintiff or any of the residents of the scheme had not approached the Sindh Building Control Authority (SBCA) against the alleged illegal construction of the fourth floor in the scheme and selling of the roof of the premises, the matter was one between the parties and the SBCA and the parties should have approached the concerned authorities. On this sole ground, the learned Trial Court declined to affirmatively answer Issue No.5. Based on this same reason, the learned Appellate Court also refused to interfere in this issue holding additionally that the matter concerned a contract between the Applicant and the Respondent No. 1 in which there is

no mention of fire extinguishers and ancillary essential facilities, and so the Applicant was wrong to claim the same in his suit. I will first consider the factual aspects of the case and then turn to the law applicable.

19. In this respect, paragraph 7 of the Plaint is relevant, and it reads:

> "That, the defendant No. 1 violated the conditions of NOC and constructed fourth floor over the project and have made the project dangerous to the inhabitant of the project and the surroundings and sold the roof of the project, which is the violation of and failed to provide fire extinguishing system both side of the stairs/lifts besides water hydrants at all convenient places for the project."

As important as paragraph 7 of the Plaint was, the reply it received from the Respondent No. 1 in its Written Statement was equally evasive and simple. On the contrary, the Respondent No. 1 attempted to make an *ad hominem* allegation rather than answering what was alleged against it:

> "6. That the contents of Para No. 7 of the plaint are denied. It is further submitted that it the plaintiff who made violation of terms and conditions of sale agreement."

20. An *ad hominem* allegation is one where, instead of addressing a person's argument/allegation, one begins to attack that person or some aspect of that person. Such an attack does not justify or defend one's own position and would be of no benefit. An *ad hominem* attack in the written statement, which I must say is a common occurrence in our legal practice, is not a sufficient defence and would come within the same meaning as a vague and evasive denial.

21. As a result, the contents of paragraph 7 of the Plaint ought to have been treated as admitted in view of the settled principle of law that an evasive and simple denial cannot be treated as a denial. In fact, an evasive reply is to be treated as an admission of the facts alleged, because

it is expected of every party defending its case to give a proper justification and reply of an allegation rather than avoiding giving an answer. Simply stating that an allegation is denied bears no weight unless and until a specific reply is given. This is a binding obligation upon a defendant party under Rules 3 to 5 of O. VIII of the CPC, which reads:

> "**3. Denial to be specific:** It shall not be sufficient for a defendant in his Written Statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.
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> **4. Evasive denial:** Where a defendant denies an allegation of fact in the plaint, he must do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.
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> **5. Specific denial:** Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability."

This principle is supported by the judgments in *Muhammad Adnan v Salah-ud-Din*[16], *Ghulam Rasool v Muhammad Hussain*[17], *Bank Alfalah Limited v Syed Zulfiqar Ali Rizvi*[18], *United Bank Limited v Ali Muhammad B. Rajani*[19], *National Command Authority v Zahoor Azam*[20], *Ghulam Hussain v Muhammad Ali*[21], *Javaid Iqbal v Inspector General of Police*[22], *Muhammad Nazir Khan v Muhammad Ameer*[23], *Louise Annie Fairley v Sajjad Ahmed Rana*[24] and many other cases. For reference, the relevant portion of *United Bank Limited* reads:

> "The denial has to be specific and not evasive or vague. Such denial would be deemed to be no denial."

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[16]2025 SCMR 653
[17]PLD 2011 SC 119
[18]2016 CLD 618 (Karachi)
[19]1994 CLC 173 (Karachi)
[20]2024 CLC 1 (Lahore)
[21]2020 MLD 1166 (Lahore)
[22]2014 PLC(CS) 787 (HC AJ&K)
[23]2012 CLC 644 (SC AJ&K)
[24]PLD 2007 Lahore 300

22. This would mean that, when a presumption of admission is entailed against evasive or simple denials, then a corresponding presumption under art. 113 of the Qanun-e-Shahadat Order, 1984[25], would also arise, meaning thereby that the Applicant's allegation in the Plaint in the present case needed no further proof. For reference, art. 113 of the QSO reads:

> "**113. Facts admitted need not be proved:** No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule **or pleading in force at the time they are deemed to have admitted by their pleadings:**
>
> Provided that the Court may in its discretion, require the facts admitted to be proved otherwise than by such admissions."
>
> (emphasis added)

23. There is yet another aspect to consider. The Respondent No.1, who is the main contesting party, did not appear through any authorised person to record evidence nor did it produce any witness to support its case. As a result, the Written Statement of the Respondent No. 1 alone is of no value to its defence. A written statement cannot be used to prove or disprove anything unless and until evidence is recorded by the concerned defendant in respect of the pleas contained therein. Pleadings cannot be used as a substitute of evidence and would not suffice against affirmative evidence recorded by the opposing party.

24. Still, out of abundant caution, I have also gone through the evidence of the official witnesses produced before the learned Trial Court.**PW-1** Jameel-ur-Rehman, Assistant Director, SBCA was examined on Oath. He deposed:

> "As per our record, M/s Hassan Construction Co., Builders and Developers applied for NOC for Sale and Advertise for the Oasis Apartment situated at Plot No. A1-20, Kousar Housing Scheme No.

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[25]"QSO"

> V, DHA, Latifabad, Hyderabad vide No. HAD/BC/NOC/ADV/I-58/527-2007 HYD dated 17.12.2007. I produce NOC containing (6) pages as Ex. P/72-B. The permission was granted for construction of Ground plus 03 floors. Ground floor consists of 09 flats while each floor consists of 10 flats. As per term No. 08 said No Objection Certificate shall be valid upto 31.10.2010. It is mentioned in condition No. 03 of special condition of NOC that Builders are bound to not sold the roof of the project and the same should be handed over to the residents association after completion of the project, which will be used by the residents of their welfare purpose jointly. I produce Stability Certificate issued by Structural Engineer, which is on record of SBCA dated 03.10.2011 as Ex.P/72-C. I produce Structural Drawing with Calculation report of Oasis Apartment Project containing (11) pages as Ex. P/72-D."

25. The No-Objection Certificate produced be **PW-1** Jameel-ur-Rehman is of utmost importance in the present case. The said document is an admitted one and its relevant terms and conditions for the present purposes read:

> "The NOC is being given exclusively subject to the strict adherence i.e. in both letter and spirit to:
>
> 1. …
>
> 2. The Building plans will be followed strictly without any change prior to the permission of this authority. The concerned Architect, Engineer, Supervisor shall ensure no violation of any of the approved prescribed rules, conditions, specification and provisions. In case of any violation by the Sponsor of 'OASIS APARTMENT' over Plot no. A1-20, Kohsar Housing Scheme No. V, DHA, Latifabad, Hyderabad, be held responsible for the same as per related UNDERTAKING(S) furnished for the above Project/Scheme.
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> …
>
> 6. Any extra work, apart from the approved specification shall be done with mutual agreement with the buyer with prior approval of the competent authority.
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> …
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> 12. …It will be the responsibility of all the above described concerned to ensure the avoidance of any trouble, inconvenience or harm to safety, free unrestricted use of abutting premises, roads, lands, paths and footpaths etc, failing which appropriate action shall become due.
>
> …
>
> 22. The Sponsor(s) shall essentially provide Letter Boxes with prior approval of design and make for proposed built up units before requesting for Occupancy Certificate.

> 23. The Sponder(s) shall invariably not cancel the Booked Unit/Bungalow/Flat/Shop/Office without prior permission from this Authority.
>
> 24. Fire extinguishing system of prior approved design and make shall invariably be provided by the Sponsor(s) at both sides of each FLOOR an Stairs/Lifts besides providing prior approved adequately connected water hydrants at all convenient places for the Project without extra charges.
>
> …
>
> 26. The Sponsor(s) should avoid risk to the health and safety of residents/uses of the constructed premises, shall invariably and with extra cost(s) provide and install Fly proof netting and frills to all openings i.e. Doors, Windows and Ventilators if desired by the allottees. PLUS at least 4 feet height parapet wall at top of Roof(s) of constructed Unit(s)."

The NOC also provides for certain "special conditions". The third special condition very relevant for the present purposes:

> "3. You are bound to not sold the roof of the project and the same should be handed over to the residence association after completion of the project which will be used by the residents of their welfare purpose jointly."

26. The NOC specifies that the scheme would comprise of thirty-nine (39) flats altogether of which nine (9) flats would be on the ground floor and thirty (30) flats would be on the first, second and third floor altogether. Similarly, at **Exh-72/C** is a Stability Certificate which is in respect of basement, ground floor plus three additional floors for the scheme. The terms of the NOC and the Stability Certificate therefore leave no room for doubt that the scheme as sanctioned by the SBCA was for three floors above the ground floor. Consequently, an inch more than the sanctioned floors would effectively be illegal and unlawful.

27. The next significant piece of evidence in respect of the issue was of **PW-2** Azeemuddin Ansari, Associate Engineer, who was appointed by the Court as Commissioner vide Order dated 15-07-2019. He deposed that:

> "…I have been provided necessary documents i.e. no objection certificate, layout plan, drawing without calculation and stability certificate. On 20.02.2020 I issued notices to concern parties in compliance of Court order and date was fixed as 23.02.2020. I visited the site with aid of police officials on 23.02.2020. Firstly, I visited basement of the project and found that there was leakage in drainage line and there was no proper sewerage system for drainage water in basement…. **I visited ground floor, 1st to 4th floor and also visited top floor.** I also visited some flats of the project and found cracks on the wall and found seepage on walls of flat. I found top floor without safety walls and found open docks and there was construction on top floor…. **The possession of top floor has not been provided to allottees of flat. I found 4th floor as illegal construction as project was approved as ground plus three floors including basement. I did not get calculation, therefore, I can say that forth floor is illegal…**"
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> (Emphasis added)

28. **PW-2** Azeemuddin Ansari was cross-examined by the Respondent No. 1's counsel but no major contradiction is seen there. He also submitted his Report dated 18-05-2020 which is on evidence as **Exh-74/A**. The said report was not specifically questioned upon by the Respondent No. 1 and would thus stand unrebutted.

29. There is no denial to the fact that the NOC issued to the Respondent No. 1 was issued by the SBCA under S. 6(1) of the Sindh Buildings Control Ordinance, 1979[26], which reads:

> "**6. Approval of Plan:** (1) No building **shall** be constructed before the Authority has, in the prescribed manner, approved the plan of such building and granted no objection certificate for the construction thereof on payment of such fee as may be prescribed."

Under S. 6-A of the 1979 Ordinance, provision is made for the specific information required from a builder for acquiring a NOC. S. 6-A (b) requires a builder to provide "plans, specifications, design and materials to be used, as approved by the Authority."Whereas, S. 7-A of the said Ordinance makes provision for the procedure to be followed in the event that the provisions of S. 6(1) are violated. S. 7-A reads:

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[26]"1979 Ordinance"

> "**7A. Violation of certain provisions:** Where the provisions of sub-section (1) of section 6 are violated the building may without prejudice to any other action including sealing of the building or ejectment of the occupants be ordered by the Authority or any officer of the authorised in this behalf to be demolished, at the cost of the builder in the case of public buildings and the owner in other cases."

30. An NOC under the 1979 Ordinance issued by the SBCA to any builder is a statutory document which creates an obligation not just between the SBCA and the builder/owner of a project, but also, and more importantly, it imposes corresponding duties on the builder/ owner in favour of the general public at large. The preamble[27] of the 1979 Ordinance clearly highlights the intent of the legislature in enacting the said ordinance to protect the general public from dangerous buildings and exploitation at the hands of builders. That being the case, in my view the NOC issued to the Respondent No. 1 was a document issued under law by a public body and it resulted in it owing a duty not just to the SBCA but also to the general public at large, which of course included the Applicant and all other residents of the scheme. The Applicant and all those aggrieved would, therefore, have *locus standi* to challenge the construction raised illegally and in violation of the law or the NOCs issued by the SBCA.

31. If a building is constructed with substandard material, it places every one of its occupants as well as the passersby in danger. Similarly, if additional floors are added to a building without making prior arrangements for a strong foundation of a building, there is a material risk of the building falling which again places the lives of the occupants and the general public in danger. These examples explain that building control regulations are a grave need of the time where advancement in the

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[27]"WHEREAS it is expedient to regulate the planning, quality of construction and buildings control, prices charged and publicity made for disposal of buildings and plots by builders and societies and demolition of dangerous and dilapidated buildings in the Province of Sindh."

construction sector has resulted in skyscrapers and multi-storied buildings being constructed. The duty to take care of such developments and to remove/rectify any wrong or illegality in compliance with building control laws has been saddled upon the SBCA and it is to be followed without fear or favour.

32. The Courts have always played a proactive role in enforcing building control laws because they ultimately go to the rights and safety of the general public at large. For instance, in *Dr. Pervaiz Mehmood Hashmi v Sindh Building Control Authority*[28], the issue was against the illegal construction of a multi-storeyed building without compliance with building control law. The matter came up before their Lordships, Irfan Saadat Khan[29] and Agha Faisal, JJ in the form of a constitutional petition, wherein no evidence was obviously recorded, and the High Court ordered that:

> "9. We, therefore, under the circumstances are left with no option but to direct the SBCA authorities to demolish the unlawful construction raised on the above referred property strictly in accordance with law and also to get the utility services, available on the said property, disconnected. The SBCA authorities, however, would be at liberty to take the assistance of the concerned DC, SSP and if needed Pakistan Rangers in this regard and furnish compliance report within one month's time from today. With these directions the instant petition along with all listed/pending application(s) stands disposed of."

33. Let me, therefore, spell out my holding in the form of a general principle: where a public authority provides a sanction or no-objection to an individual or a business under a law to do a particular act, then that act must be done strictly in terms of that sanction or no-objection. By way of such a sanction or no-objection, the said individual or business owes a duty not only to the public authority but to the law and by extension to the general public at large. Therefore, any contravention of

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[28]2022 YLR 1448 (Karachi)
[29]Who has since been elevated to the Supreme Court

the sanction or no-objection would for all purposes entitle an aggrieved person having a sound cause of action to approach a court by way of a civil suit and have the illegality or legal wrong corrected.

34. The law pertaining to civil suits, in my understanding, does not impose any obligation to invoke an alternative remedy before approaching the civil court concerned, like it does in the event that a party approaches the constitutional jurisdiction of a High Court under art. 199 of the Constitution of the Islamic Republic of Pakistan, 1973[30].As such, unless the factual circumstances of the case so demand, there is no legal obligation on any party to do so. Therefore, in the present case, even if the Applicant approached the learned Trial Court directly, that would make no difference in it having his cause of action enforced through a decree of the Court.

35. With all due respect to both the learned Courts below, the failure, if any, of the Applicant or any resident of the scheme to approach the SBCA against the illegal construction was not a material fact and it was wholly insufficient to disregard the enforcement of the law. There may very well be cases where SBCA is unable to enforce the law in respect of certain buildings, and the construction of such buildings may be completed illegally and not on requisite standards. However, the failure of the SBCA to itself perform its duties, or of a party to approach SBCA to rectify the wrong being committed, does not give a clean chit to the builder to blindly raise a plaza, when really the permission granted is to build a house.

36. A reading of the Trial and Appeal Judgments would show that the evidences led in respect of Issue No. 5 by the witnesses highlighted above were not at all considered. The observations of the

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[30]"Constitution"

learned Appellate Court on the matter of fire extinguishers and other safety equipment are astonishing:

> "…the appellant/plaintiff's entire claim is based upon the terms and conditions executed in between him and defendant No. 1 at the time of booking of such flat and this document is brought on record at Ex.P/76. **A minute look at this document shows that no condition regarding fire extinguish, electricity light or water hydrant nor roof top is mentioned in such terms and conditions and if it being the position, to say that finding as to issue No. 5 is not proper, it is wrong.**"

37. I have already held that these terms and conditions are clearly and unambiguously provided in the NOC given to the Respondent No. 1 by the SBCA which document imposes an obligation under the law and therefore an obligation to the public. Had the Applicant's prayer sought a personal benefit or obligation that was specific to the Applicant alone, for example payment of consideration or delivery of possession, then the conditions of the contract between him and the Respondent would indeed have come into play, and the non-mention thereof in the terms and conditions would have been highly relevant. If it is already not clear, the provision of fire extinguishers and water hydrants as required in the NOC was in the furtherance of the rights of the general public established under law and not of the Applicant alone under contract. I find it rather strange—in all honesty, I find it sad—that the learned Appellate Court did not differentiate between personal and public/legal obligations of the Respondent No. 1 and as a result exposed whoever enters into the premises to the grave risk of fire and lack of water supply.

38. The last matter to consider is the plea of the Applicant as to selling the roof of the scheme. It is an admitted position, yet again, that the Respondent No. 1 was bound down by the SBCA (under the terms of the NOC issued under the law) not to sell the roof of the scheme and that the same shall be used for the joint benefit of the residents of the scheme

(including the Applicant). The Respondent No. 1 was and continues to be bound by the said condition in complete letter and spirit and has no right to sell the roof of the premises to anyone. It is bound to place the roof at the disposal of the residents of the scheme without failure and nothing has been brought on record to show to the contrary.

39. I am of the deliberate opinion that the findings of the learned Trial and Appellate Courts as to Prayer Clauses (a), (b), (c) and (g) are a result of their failure to consider the facts and law. This is a classic case of non-reading of evidence and gross misinterpretation and non-application of the otherwise clearly applicable law. All these reliefs should have, in fact, been granted, which I shall now do in line with the settled principle that justice should not only be done, it should clearly and manifestly be seen to be done as well.

40. I would therefore partly modify the concurrent findings recorded by the Trial and Appellate Courts to the extent of Issue No. 5 and Prayer Clauses (a), (b), (c) and (g) and decree the suit of the Applicant to that extent while maintaining the Trial and Appeal Judgments to the remaining extent. I would additionally hold and direct that:

i. If the Respondent No. 1 has created any third-party rights in respect of the additional floor in favour of any person illegally and unlawfully, that person shall have the right to be compensated by the Respondent No. 1 as per law.

ii. The Respondents Nos. 2 to6 (and specifically the Respondents Nos. 3 and 4) shall carry out the demolition of the fourth (4^{th}) illegally constructed floor of the scheme strictly as per the 1979 Ordinance. However, if any third-party rights have been created in the construction on the fourth (4^{th}) floor, the possession and amenities of the inhabitants shall not be disturbed until and unless they have been properly and fully

compensated by the Respondent No. 1 for their investments along with compensation and damages as per law.

iii. The Respondent No. 6 (Mukhtiarkar, Taluka Latifabad) is directed to convey a certified copy of this Judgment to all the residents/occupants of the fourth (4th) floor, if any, and shall intimate them that they are entitled to recover their investments along with compensation and damages from the Respondent No. 1 as per law by approaching the competent civil court of law.

iv. The official Respondents are directed to initiate (civil, disciplinary and, if applicable, criminal) proceedings against the owner/sponsor of the Respondent No. 1 and the responsible officials of the SBCA who were bound to ensure compliance with the building control laws but failed to do so.

v. The official Respondents shall also ensure that the terms and conditions of the NOC under which the project was constructed are fully complied with in complete letter and spirit.

41. This revision application is accordingly disposed of along with any pending applications. Since the Respondent No. 1 has *prima facie* cheated the general public as also the Applicant and acted in violation of mandatory building control laws, a lenient view as to costs cannot be taken. Costs of the proceedings throughout shall be borne by the Respondent No. 1.

JUDGE