

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Dr.Syed Fiaz Ul Hassan Shah

H.C.A. No.55 of 2020

M/s. Fine Enterprises Traders

Vs.

M/s. Constellation Co-operative Housing Society Ltd. & 37 others

APPELLANT : Through Mr. Zia-ul-Haq Makhdoom, Advocate

RESPONDENTS : Through Mr. Muhammad Nouman Jamali,
Advocate.

Date of Hearing : 06.11.2025

Date of Short order : 06.11.2025

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JUDGMENT

Dr. Syed Fiaz ul Hassan Shah, J. :- This High Court Appeal challenges the Order dated 12.12.2019 (the "**impugned Order**") issued by the learned Single Judge of this Court in its erstwhile original civil jurisdiction, whereby the application for interim injunction (C.M.A. No. 10471/2016), filed by the Appellant in Suit No. 1625 of 2016, was dismissed.

2. The facts as set out in the plaint that a Memorandum of Understanding was executed between the appellant/plaintiff and the Respondent/ Defendant No.1 (a Co-operative Society registered under the Co-operative Societies Act, 1925) through its four office bearers. The Society was ostensibly incorporated to develop and facilitate the transfer of

ownership of residential flats, along with the proportionate share in the underlying plot, to the individual unit owners. It is further stated that in a meeting held on 16.05.2016, the members of the Society—comprising the owners of 36 flats—agreed in principle to sell their respective units to a developer/builder at a uniform price of Rs. 41,500,000/- (Rupees Forty-One Million Five Hundred Thousand) per unit. This arrangement was allegedly necessitated by the expiry of the lease of the underlying plot and the consequent demand by the Karachi Metropolitan Corporation (respondent/defendant No.38) for its renewal. As the individual owners were unable to bear the financial burden, the proposed sale scheme was devised to generate the requisite funds and provide a structured mechanism for disinvestment.

3. Pursuant to the MoU, the appellant/plaintiff is said to have entered into individual Agreements of Sale with 18 flat owners, under which 10% of the sale consideration was paid as earnest money through respondent/defendant No.1. With the arrangement facing resistance, the appellant/plaintiff was compelled to institute the present suit, naming the Society as respondent/defendant No.1 and the 36 flat owners as respondents/defendants No.2 to 37. Alongside the suit, the appellant/plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CMA No.10471/2016), seeking to restrain respondents/defendants No.1 to 37 from transferring, alienating, selling, or entering into any agreement to transfer the 36 flats—whether individually or collectively—or from creating any third-party interest therein during the pendency of the suit. On 21.07.2016, an interim order was passed directing

the parties to maintain status quo. However, upon hearing of interim injunction application, the same was recalled and the injunction application has been dismissed by the learned Single Judge through the Order which is impugned before us. The said application is now before this Court for hearing and determination.

4. Learned counsel appearing on behalf of the appellant while reiterating the aforesaid facts has vehemently argued that the impugned order has been passed by the learned Single Judge without applying its judicious mind; that during hearing of injunction application, learned counsel for the appellant/plaintiff has specifically pointed out that only one respondent (defendant No.28) had filed his counter-affidavit to the injunction application and the learned Single Judge while passing the impugned order has not appreciated the inter-connectivity, interdependence and inter-contingencies as involved in the present case under MoU. Per learned counsel, under law in the situation of contradictory stances pleaded by two different sets of respondents/defendants, authenticity of either of the stances was required to have been tentatively assessed and determined. Per learned counsel, the impugned order observes a total silence and fails to deal with the issue of total fourteen respondents/defendants, who have either not filed written-statements or have even not been represented during the hearing of injunction application. It has been further argued by the learned counsel for appellant that non-recording of any finding by the learned Single Judge in the unique situation of contradictory stances by two sets of respondents/defendants, renders the impugned order a mere nullity in the eyes of law. Per learned counsel, while passing the impugned order learned

Single Judge has not exercised its discretion in accordance with well settled principles of law, hence the impugned order is liable to be set aside.

5. Conversely, learned counsel appearing on behalf of the respondents has supported the impugned order by vehemently opposing the contentions of the learned counsel for appellant.

6. We have heard learned counsel for the parties, minutely perused the record and have also gone through the impugned order passed by the learned Single Judge with their assistance.

7. The appellant has instituted a Suit bearing No.1625 of 2016 for specific performance of contract against respondents seeking enforcement of Memorandum of Understanding dated 27.05.20216 (the “**MoU**”) for transfer of the property having 36 flats constructed on Survey No.16, Sheet No.F.T.2 measuring 3621 square yards situated at Chaudhry Khaliq-uz-Zaman Road, Frere Town, Karachi, (**said property**) which is commonly known as Rimpa Apartments together with its land. The appellant being plaintiff has also filed CMA No.10471/2016 in the said suit with prayer for interim injunctive relief against the respondents from transferring, alienating or creating third party interest in respect of the said property which has dismissed by the learned Single Judge after hearing the parties through the impugned Order.

8. Under the Contract Act, 1872, an agreement becomes a legally enforceable contract only when it satisfies the essential elements of offer, acceptance, and legal consideration. These components are foundational to the formation of a valid contract. An offer must be clear and made with the intention to create legal relations; acceptance must be absolute and

communicated effectively; and consideration must involve something of value exchanged between the parties. In the absence of any of these elements, no document or arrangement can be deemed a contract capable of enforcement by a court of law.

9. We are mindful of the settled proposition of law that a contract may either be expressed or implied. The distinction lying not in legal effect but in the mode of manifestation of mutual consent. An express contract arises where the terms are articulated in spoken or written words, whereas an implied contract is inferred from the conduct of the parties or the surrounding circumstances indicating a mutual intention to bind themselves. Besides, the Courts have also recognized that where parties continue to act in accordance with the terms of an expired express contract, an implied contract may be inferred, reflecting a tacit renewal of the original agreement. A conspicuous absence of any term mutually agreed upon—whether articulated in words or inferred through conduct—that would give rise to a binding contractual relationship between the parties and noticeable before the court to attribute towards injunctive relief.

10. We do not find any merits in the contentions of learned counsel for appellant that respondents No.2 to 37 are bound by MoU (contract) which was executed by and between the Appellant and Respondent No.1 and the said Respondent No.1 was authorized by the Respondents No.2 to 37 vide Understanding dated 16.05.2016 and therefore upon such express consent given by the Respondents No.2 to 37 handed down in favor of Respondent No.1, the Respondents No.2 to 37 are bound by MoU being a qualified contract and, therefore, the Appellant has a prima facie case to grant an

injunction till the final determination of the rights between the parties in the said suit. Upon reading of the “MoU” and the "Understanding", there is no discernible evidence of either an express or implied contract. Mere documentation or mutual understanding, without these statutory prerequisites, does not confer contractual validity. It may be observed that in cases where privity of contract is absent and no direct contractual relationship exists between the promisor and the promisee, the courts have recognized that privity may be established through conduct, acknowledgment, or admission. Once such privity is created, the promisor may be entitled to bring an action. Conversely, where both elements of express or implied terms of a contract are absent, no action can be brought. Upon careful examination of the MoU, we found that the Respondents No.2 to 37 are not signatory to said MoU. Neither Understanding dated 16.05.2016 relied upon by the learned counsel for the Appellant, has authorized the Respondent No.1 to enter into contract on behalf of said Respondents with any third party nor there is any reference with regard to fixation of sale consideration by and between the Appellant and Respondents (except Respondent No.1) nor it has acknowledgement for payment of earnest money.

11. Section 2(d) of the Contract Act 1872 defines consideration as an act done at the desire of the promisor by the promisee or any other person. It encompasses any exchange of value that benefits all parties to a contract. In essence, consideration refers to anything of value promised to or received by the promisor from the promisee in return for the promise made. The said clause should not be interpreted narrowly. Judicial interpretation has

broadened the definition scope of the phrase “from the promise”, which allowed consideration to flow from a third party or even from the promisor themselves. This inclusive approach aligns with the principles of contractual fairness and ensures that both parties are adequately compensated for their respective obligations. In the present case, the record indicates that the appellant did not furnish any consideration in exchange for the promise made to Respondent No. 1 and even the Respondents No.2 to 37 have not authorized the Respondent No.1 to collect the consideration. Consideration is a fundamental element of a legally enforceable contract but its absence renders the agreement void or of no legal effect. While a “stranger to consideration” may have the right to sue, a “stranger to the contract”—someone who is not a party to the agreement—cannot enforce it, even if they stand to benefit from its terms. This position diverges from English law, which allows certain third-party beneficiaries to enforce contractual promises.

12. Learned counsel for the appellant has not denied the fact that 36 owners’ flats have undivided shares in the subject land by way of virtue of membership and shareholding in the Cooperative Housing Society Limited alongwith undivided shares in the piece of land in question and the Respondents have not received any sale consideration in respect of their undivided share or precisely against their individual flat out of 36 flats, therefore, the learned Single Judge has rightly held that it cannot be said on the basis of MoU that flats’ owners are bound by the said documents, who have even not signed or agreed thereto. Mere acknowledgement of sale request dated 16.05.2016 signed by the respondents in favor of respondent

No.1 Cooperative Housing Society Limited do not bound the parties in the absence of contract and it would create more legal complicity and unnecessarily burden the unwilling parties through an injunctive prohibition when no privity of contract is pleaded before us or supported by the record of the appellant himself. The appellant has filed present suit under Specific Relief Act, 1877 for enforcement of contract, which is a *discretionary relief* and in pursuit to such discretionary relief, the Appellant has sought injunction which is regulated under the three golden principles that a person must have a prima facie case, balance of convenience arises in his favor and that he would suffer irreparable loss in case injunction has not been granted. For a discretionary relief it is the duty of plaintiff purchaser to demonstrate the legal relationship of parties coupled with fact that he must show that he has a prima facie case. In the absence of express or implied contract between the parties, the appellant is not entitled for injunction of whatsoever nature against an alien person thereby to restrain the Respondents to stop their valuable right from sell, transfer, alienate, convey or dispose of their property which they own under an independent valid and subsisting title within four corners of law.

13. In due course, in a careful judgment, the learned single judge did draw inference adverse to the Appellant for his failure to answer the question of maintainability of injunction application from his own pleadings and notably observed that there has not been a privity of contract between the parties either by way of signing MoU or express consent or implied conduct fixing sale price or consideration. To our conscious mind, the appellant has no prima facie case and balance of convenience do not attract in favor of

appellant, in absence of any contract specifically executed for the sale and purchase of the flats either individual or collectively or sale consideration is fixed or paid, therefore, we do not find any infirmity in the impugned Order which is well-reasoned and comprehensive and covers all the aspect of the case. There is no inference to be drawn or point made on the facts, that could, by possibility, alter the result. Consequently, the appeal is not maintainable and the same was dismissed vide our short order dated 06.11.2025 and these are the reasons thereof.

14. It would suffice to observe that findings given or observation recorded are tentative in nature and only for the purposes of deciding present appeal which shall not affect the merits of the case in any manner which will be decided by the trial court after recording the evidence of the parties.

J U D G E

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Karachi
Dated ____ November 2025.