

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 351 of 2002

Date

Order with signature of Judge

For hearing of CMA No.9583/2013 (U/S 151 CPC).

05/11/2013:

Mr. Shahenshah Hussain, Advocate for the plaintiff.

Syed Iftikhar-ul-Hassan, Advocate for the defendant, alongwith (1) Muhammad Wariar, Additional Director of Recovery, KDA Wing, CDGK/KMC, (2) Abdul Karim Palejo, Additional Director of Companies Cell, Land Department, KDA Wing, CDGK/KMC, and (3) Syed Zahid Ali, Assistant Director of recovery, KDA Wing, CDGK/KMC.

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Through this application (CMA No.9583 of 2013) the plaintiff has made the following prayer:-

“This Honorable Court may be pleased to direct the Defendant to issue payment challan in the light of charges told by them and then execute Lease Deed of the plot in favour of the Plaintiff. Moreover, this Honorable Court may be pleased to dispose off pending applications bearing CMA No.1610/12 & CMA No.12532/13 with permission to file new Suit later for refund of NUF charges and exorbitant lease charges as well as claim damages for delay by the Defendant.”

No counter-affidavit to this application has been filed by the defendant. However, today CDGK/KMC has filed a statement showing the total dues on the plot amounting to Rs.17,58,850/- as payable by the plaintiff. The plaintiff has already shown its willingness to clear all dues ‘under protest’ since the plaintiff claims that these dues have not been properly calculated by the defendant.

Be that as it may, once the plaintiff deposited all the dues with the reservations that at any point of time in accordance with

law the plaintiff may recover any sum ever paid to the defendant. The defendant within fifteen days of realizing the said amount complete the process of execution of Lease Deed of the plot in question otherwise Nazir of this Court will be directed to execute the lease in favour of the plaintiff. The counsel for the defendant clarified that the demand raised in the statement filed today is only in respect of the non-utilization charges and the charges of execution of lease are separate. The officers of defendant present in Court have informed that as of today the lease expenses will be charged @ Rs.250/- per square yard which the plaintiff would also be required to deposit with the defendant for execution of lease to be followed by approval of building plan. The learned counsel for the plaintiff again disputes with the rate of Rs.250/ per square yard. However, like Non-Utilization Fund (NUF) charges, the plaintiff is ready to deposit the lease charges at the rate of Rs.250/- per square yard under protest subject to the right of plaintiff to recover the excess payment, if any, from the defendant in accordance with law. The defendant is directed to execute the lease on receiving the lease charges from the plaintiff within one week.

In view of above CMA No.9583 of 2013 stand allowed as prayed. Learned counsel for the plaintiff says that with this decision, two other applications CMA Nos.1610 of 2012 and 12532 of 2013, which are pending and not fixed today, have become infructuous and he does not want to press the same. Accordingly CMA Nos.1610 of 2012 and 12532 of 2013 are dismissed as not pressed. There is nothing left in this case to be taken care of by the Court. The case file may be consigned to record.

JUDGE

S.Akhtar