

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1212 of 2008

Date	Order with signature of Judge
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1. For hearing of CMA No.8474/2008 (U/O 39 R 1&2 CPC)
2. For hearing of CMA No.12077/2008 (U/O 7 R 11 CPC)
3. For orders on Nazir's report dated 20.12.2012.
4. For examination of the parties/settlement of issues.
(Attention is respectfully invited to the order dated 27.5.2010, passed in HCA No.93 of 2010).

(Statement dated 26.5.2012, filed by Advocate for the Defendants No.1 and 2, at flag 'B')

11/11/2013:

Mr. Muhammad Arif, Advocate for the plaintiffs.

Mr. Farrukh Zia Shaikh, Advocate for Defendants No.1 and 2.

None present for the rest of the defendants.

1. Learned counsel for the parties have advanced their arguments at quite some time and during the course of arguments it transpired that Defendants No.1 and 2 had been ready and prepared to pay a sum of Rs.26,00,000/- which is due and payable by them in terms of agreement. It is not disputed by the plaintiff that an exact amount on that date was payable by Defendants No.1 and 2 was Rs.26,00,000/-. However, learned counsel for Defendants No.1 and 2 contends that this amount was over and above the dues payable on the property in question. A pay order of Rs.26,00,000/- in the name of plaintiff(s) was ready on 8th December, 2007, and placed in Court's hands for delivery to the plaintiffs. The said pay order is available with the Nazir of this Court. However, the plaintiffs never attempted to claim the said

pay order “without prejudice” to their rights. Admittedly, the defendants have shown their willingness and deposited the above said pay order of Rs.26,00,000/- and is available on record of Court file. In the circumstances, CMA No.8474 of 2008, under Order 39 Rules 1 and 2 CPC, is granted only to the extent that the Defendants No.1 and 2 shall not create any third party interest in the property in question pending the suit. However, they may raise construction on the plot at their own risk and costs.

In terms of above CMA No.8474 of 2008 is disposed of.

2. Learned counsel for Defendant1 No.1 and 2 does not press this application (CMA No.12077 of 2008) which is accordingly dismissed as not pressed.

3. Nazir report dated 20.12.2012 presented on 21.12.2012 is taken on record and Nazir is directed to invest the amount of pay order as indicated in his report in some government profit bearing scheme.

4. Adjourned to a date in office.

JUDGE

S.Akhtar