

IN THE HIGH COURT OF SINDH AT KARACHI

Ex. A. No. 77 of 2011

Date

Order with signature of Judge

1. For hearing of CMA No.302/2012
(U/O 30 R 7 & ORDER 40 R 1 CPC)
2. For hearing of execution application.

21/11/2013:

Mr. Mansoor-ul-Arfin, Advocate for the decree-holder.

Mr. Pervaiz A. Shams Memon, Advocate for the
judgment-debtors.

1. Through this application (CMA No.302 of 2012) learned counsel for the decree-holder seeks inspection of Plot No.ST-4a and ST-4/6, Block No.5/A, Nazimabad, Karachi, which is subject matter of the decree on the ground that the judgment-debtors are trying to create third party interest and even raising construction to hand over possession of different portions of the property to different persons to complicate the execution of the judgment and decree. The position of the file on facts are as follows:-

- a) This execution application was filed on 22.9.2011 against the judgment and decree dated 3.2.2009.
- b) On 22.1.2013 learned counsel for the judgment-debtors made a statement in writing that they intend to file objections to this execution application. Thereafter, nobody appeared in this case on behalf of the State – judgment-debtors and today objection have been file in Court and copy supplied to the other side.

- c) The present application (CMA No.302 of 2012) was filed on 25.5.2012 and even till today no counter-affidavit to this application has been filed.

Learned counsel for the judgment-debtors further informs the Court that a High Court Appeal was filed against the judgment and decree which is subject matter of this execution application. However, that High Court Appeal was dismissed for non-prosecution and till dates the application for restoration of that High Court Appeal is still pending, meaning thereby that there is no appeal pending against the judgment and decree at this point of time. Learned counsel for the judgment-debtors has opposed this application on the ground that valuable property of the government is involved and the Court should be merciful in protecting the state property. When the state counsel himself is not seriously conducting this matter any indulgence on the part of Court against the decree-holder would not only be a sheer example of injustice to the decree-holder but would also amounts to neglecting the judgment and decree once they have been granted in favour of citizen of Pakistan. The Courts are not here to merciful of government or the common litigant. In the present case the justice required that the property should be protected pending this execution application. Therefore, Official Assignee of Karachi is appointed Commissioner to immediately inspect the property in dispute without notice to the parties within twenty four hours and submit a comprehensive report alongwith photographs. The parties are directed to maintain status-quo and if there will be any violation the Court will take a serious note on it. The fee of the

Official Assignee will be Rs.20,000/- which will be paid by the decree-holder.

In terms of above, CMA No.302 of 2012 is disposed of.

2. Deferred.

Adjourned to a date in office.

JUDGE

S.Akhtar