

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
R.A. No.221 of 2005.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA 09/2014.

10.09.2014.

Mr. Irfan Ahmed Qureshi Advocate for the applicant.

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Through this Review application, the applicant has sought review of order dated 17.12.2013 passed by this court on CMA 1061/2010, the said application was Contempt Application, which was dismissed with cost of Rs.10,000/-. The applicant has avoided to deposit the cost under the cover of this Review application though the order under review has never been suspended.

2. Learned counsel for the applicant while arguing this application has claimed that in the order under review, the point for consideration for non compliance of the order dated 17.08.2009 was not properly considered by this court. Its relevant part is reproduced as under;-

Be that as it may, in case the debris are still lying and obstructing the free access of the applicants to their respective flats, the respondent No.2 is directed to remove such debris **within a period of one week** and claim its costs from the respondent No.1. The report of compliance of this order be filed by the Respondent No.2 immediately to the Additional Registrar of this court with satisfaction of the applicants recorded on it

3. Learned counsel for the applicant has not been able to point any error floating on the surface of the record to be considered as not examined by the court while dismissing the Contempt Application by order dated 17.12.2013. This Contempt Application was patently a harassment and attempt to abuse the process of the court and the learned counsel before hearing was warned by the Court that since the application

on the face of it is frivolous, if he insist to proceed on merits, on his failure to show its merits, he will have to face imposition of cost. This warning is mentioned in the order under review, which is reproduced as under;

“Before starting with the merits of the case, I may mention here that after hearing the arguments at some length and at initial stage of proceedings, learned counsel for the applicant was apprised that there appears no substance in the contempt application and if after complete hearing, the contempt application is found meritless, the same shall be dismissed with cost. However, learned counsel for the applicant despite clear warning insisted to proceed with the Contempt Application and decide the same on merits.”

4. The Court in the order under review has observed that the time limit for compliance of order dated 17.08.2009 was only one week and the applicant has filed Contempt Application on 13.10.2010 (after more than one year and two months) and this delay has not been explained. The Court in the order under review observed as under:-

“The applicant after expiry of one week’s time provided in the order dated 17.08.2009 for removal of debris remained silent till filing of Contempt Application on 13.10.2010, which manifest that the applicant was aware of each and every progress carried on for compliance of the order dated 17.08.2009 and was satisfied. Learned counsel for the applicant on query of this court has admitted that the proposed contemnor No.1 has sold his property in the year 2010 while confronted with the compliance report submitted by the proposed contemnor No.2 regarding the removal of debris as ordered by this court, learned counsel for the applicant has not controverted the same, however, his contention is that the entire process for removal of debris was carried on in absence of the applicant.

Even today he has not challenged in the review application that compliance report was not submitted by the contemnor No.2 as mentioned in the order under review by the court.

5. It was further observed in the order under review that the applicant himself in para No.6 of his affidavit has admitted that the respondent No.1 has sold out the property to another person, who has constructed fourth floor on the roof of third floor without approved plan. All the construction was raised after the expiry of one week's time given by Court to remove the debris from the passage leading to the flat of the applicant. In view of the facts which had already come on record, no contempt was made out, and yet the learned counsel insisted and argued the application and thereby willfully wasted the time of Court. Therefore, there was hardly anything in the Contempt Application (CMA No.1061/2010). Thus insistence of the applicant's counsel to press Contempt Application even after warning by the court was uncalled for and it was rightly dismissed with cost.

6. In view of the above facts and circumstances, the applicant has miserably failed to establish anything contrary to the facts from the order to review the same, therefore, Review Application which was a frivolous attempt to avoid compliance of the order whereby the applicant was required to deposit Rs.10,000/- in the account of Dispensary established in Circuit Court Hyderabad within one month. The order was passed in December, 2013 and it was not suspended, therefore, while dismissing this Review Application as devoid of merits, the applicant is directed to comply with the order dated 17.12.2013 within 10 days and in case of his failure, Additional Registrar of this court shall take steps for compliance of the orders in accordance with law and report to the Court in Chamber.

JUDGE

A.K