

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.315/2010

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For hearing of CMA No.2912/2010 (U/o.39 Rule 1 & 2 CPC)
2. For Examination of parties/settlement of issues

28.10.2014

Mr. M. A. Khan, advocate for the Plaintiff.
Mr. S. M. Salam Kazmi, advocate for the Defendant No.2.

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1. Plaintiff seems to have entered in an agreement of sale of the property which was already mortgaged by the seller with the Defendant No.2 (HBFC). He entered into an agreement of sale at the time when the property was already put on auction for non-payment of HBFC dues / liability on the suit property. The Plaintiff has filed suit for specific performance against Defendant No.1 and impleaded HBFC as Defendant No.2 without any cause of action to bring the suit against the Defendant No.2 and even moved an application for ad-interim orders which is pending till date. However, only Defendant No.2 contested and filed written statement on **05.5.2010** and in para 3 it is claimed by Defendant No.2 that till April, 2010 a sum of **Rs.29,17,057/-** was due and payable by Defendant No.1 against the mortgaged suit property. The transaction of this mortgaged property between Plaintiff and Defendant No.1 was on the face of illegal and fraudulent at least to the extent that Defendant No.1 had no authority to sell the suit property without disclosing the fact that the suit property was mortgaged. Be that as it may, Plaintiff has no right to contest recovery of HBFC against the Defendant No.1 and the claim of the Defendant No.2 as far as back on April, 2010 was a sum of **Rs.2,917,057/-**, which is charge on the suit property, therefore, if Plaintiff wants to maintain the suit he has to first deposit the said amount within 30 days from today subject to increase in terms of loan agreement as this amount was for the period upto **10.4.2010** and he should be prepared to

deposit the increased amount of liability since then. If this amount of **Rs.29,17,057/-** is not deposited within one month the suit against the Defendant No.2 shall stand dismissed as even otherwise suit is not maintainable against the Defendant No.2 as the Plaintiff has no privity of contract with Defendant No.2. Learned counsel for the Plaintiff after four years is not willing to press this application, which is immaterial, the very suit is not maintainable unless buyer is not ready to redeem the mortgaged property. This suit on **28.11.2014** shall stand dismissed against Defendant No.2 in case of default of Plaintiff to deposit the sum of **Rs.29,17,057/-** in Court as stipulated hereinabove. On 28.11.2014 case of default the plaint as against Defendant No.2 shall be struck off. Thereafter the Defendant No.2 may take any step in the direction for recovery of loan with interest / markup from the Defendant No.1 by even putting the suit property for auction / sale in accordance with law.

JUDGE