

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No. 180 of 2012

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DATE                      ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For orders on CMA No. 1494/2012.  
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**15.01.2015**

Mr. Chaudhry Abdul Rasheed, Advocate for Plaintiff  
Mr. Wasif Riaz, Advocate for Defendants Nos.1, 3 & 6 to 13  
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Learned counsel for the plaintiff has concluded his arguments. Counter affidavit and affidavit-in-rejoinder have already been filed by the parties. The counsel for the defendants has advanced his arguments, however, he was allowed to file written synopsis of his arguments on the next day. A simple question has been raised that the defendants have executed agreement in which the plaintiff is also party and defendant No. 6 affixed his signature on the same. This agreement confirms payment of huge amount by the plaintiff to the defendant. The counsel for the defendants Nos.1, 3 and 6 to 13 present in Court has no answer to this admitted factual proposition, however, he sought time to argue this application, therefore, he was given only 24 hours to file written synopsis in view of the fact that this case is pending since 2012 and the defendants are beneficiary of the delay. He has filed written synopsis in which he has repeated almost the contents of the counter affidavit and written statement filed by the defendants. The question raised the other day has not been answered. The arguments suggest that the defendants have admitted that there are shares available in their record in the name of the Plaintiff, however, they submitted that these are only 500 shares which they are ready and willing to handover to the plaintiff. The contention of the defendants that the record available with them does not show the existence of the record of shares claimed by the plaintiff, prima facie, is not confidence inspiring. Since the record is in their possession and there is every likelihood that the defendants shall temper with the record and the very fact that 500 shares are available with them does create a doubt in the version of the defendants. The

other contention of the defendants that the management has been changed subsequently is of no consequence since the change of the management of a limited company does not absolve the new management with the liability of the previous management which has been replaced by them. It has vehemently been claimed by the defendants that the suit is not maintainable, however, there are questions of facts which need to be resolved by recording of evidence as pointed out even in their counter affidavit and written statement. That is why the defendants till date have not filed any application for dismissal of suit under Order VII Rule 11 CPC. The scrutiny of the file suggests that this suit is ripe for framing of issues since 18.10.2012, the plaintiff has already filed proposed issues on 08.03.2014 and even the defendants Nos.1, 3 and 6 to 13 have also filed proposed issues. The very fact that instead of filing application for dismissal of suit as claimed in their written synopsis, they have chosen to frame legal issues such as bar under Order II Rule 2 CPC read with Section 12(1) of the Code of Civil Procedure. This confirms that the defendants in their heart and mind are clear that even the legal questions are not purely questions of law. There are mixed questions of law and facts which need to be decided after recording of evidence.

In the above circumstances, the plaintiff has made out a prima facie case, therefore, injunction granted earlier is confirmed on the same terms and conditions and defendant No.6 is particularly restrained from creating any third party interest. To come up on 03.02.2015 for settlement of issues and appointment of Commissioner for recording of evidence.

JUDGE

*Gulsher/PA*