

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No 201 of 2007****WorldCall Telecom Limited ----- Plaintiff****Versus****Florida Homes Residents Welfare
Association and Five Others ----- Defendants****Date of hearing: 15.04.2015****Date of judgment: 13.05.2015****Plaintiff: Through Mr. Tasawwar Ali Hashmi Advocate.****Defendants: Nemo for the defendants.****J U D G M E N T**

Muhammad Junaid Ghaffar, J. Instant Suit has been filed by the plaintiff against the Residents Welfare Association of Florida Homes, an Apartment Complex, including its President and other office bearers for Declaration and Injunction seeking the following relief(s):-

- “i) Declare that the demand of defendants No. 1 to 4 for money from the plaintiff is unlawful as they have no locus standi or privity of contract with plaintiff.
- ii) Declare that the plaintiff has a right of access to the common areas / amenities of the building for the purpose of servicing the equipments. connections to the residents / flat owners who have entered into agreements for the services of the plaintiff.

- iii) To restrain permanently defendants No. 1 to 4 their servants / employees / Attorneys from interfering with plaintiff's right to access to the building.
- iv) To restrain permanently defendants No. 1 to 4 in any manner from interfering with the business of the plaintiff.
- v) Cost of the suit.
- vi) Any other further relief or reliefs warranted by facts and circumstances of the case and this Hon'ble Court may deem fit and proper."

2. Notices / summons were ordered in the instant matter whereafter written statement was filed on behalf of defendants No. 1 to 4 and by consent of the parties on 24.5.2010 the following issues were framed:-

- "1) Whether the defendants No. 1, has any locus standi for the welfare of the flat owners?
- 2) Whether the defendant's No. 1 to 4 have any concern with the defendant No. 5 and 6?
- 3) Whether the plaintiff has any cause of action against the defendant's No. 1 to 4?
- 4) What should be decree be?

3. Thereafter, by consent of the parties, the matter was referred to the Commissioner for recording of evidence, however, on 28.8.2011 learned Counsel for defendant's No. 1 to 4 sought permission to withdraw his Vakalatnama as despite repeated notices he had received no instructions. Such application was allowed by this Court, whereafter, this Court on 13.2.2105, after having left with no option, closed the side of the defendants for evidence and the matter was listed for final arguments.

4. Learned Counsel for the plaintiff has contended that the plaintiff is a service provider for extending cable network services to individual subscribers including the Residents of Florida Homes and enters into individual contracts with such subscribers. Per learned Counsel the defendant's No.2 to 4 who are office bearers of Defendant No.1 (Association of Residents) had been creating hindrance in due performance and rendering of services by the plaintiff, which had compelled the plaintiff to file instant Suit. Learned Counsel further contended that the plaintiff is neither answerable to the Residents Association nor is required in law to make payment of any commission to the Residents Association and or its office bearers, whereas, they provide services to individuals / residents who have no complaint against the plaintiff. It has been prayed by the learned Counsel for the plaintiff that since no evidence has been led by the defendants in the instant matter; whereas, they have also failed to cross examine the plaintiff's witness, instant Suit may be decreed as prayed.

5. I have heard the learned Counsel, perused the record and the evidence so recorded on behalf of the plaintiff. Though the defendants No.1 to 4 have failed to lead any evidence in the instant matter, however, initially they were being represented in the instant matter and had filed written statement which is on record. Admittedly the defendants have failed to lead any evidence in the instant matter and have also failed to either cross examine the witness of the plaintiff nor have led any arguments in the instant matter so as to defend their case, however, this Court in matters wherein Ex-parte proceedings are being carried on, has an additional burden and duty cast upon it, to ensure

that the ends of justice are met and the interest of the party who has not been able to defend its case for any reason whatsoever, shall be protected and must be dealt with in accordance with law. The Court is required to examine the affidavit in evidence filed in such proceedings and to see that the contention so raised is supported by evidence and supporting material or not. It is the duty of the Court to see whether the Plaintiff is entitled to the relief being claimed and if yes, then to what extent. The Suit cannot be decreed as prayed in such matters, until and unless the Court is satisfied in this regard. Reliance in this regard may be placed on the case of ***Nisar Ahmed & another Vs. Habib Bank Limited (1980 CLC 981) and Messers Al-Pak Ghee Mills through Managing Partner Vs. Zeeshan Traders through Proprietor (2008 CLC 120)***

6. It appears that the primary grievance of the plaintiff in the instant matter is with regard to the demand of Resident's Association for payment of commission / discount to the said Association against installation of cable network in the residential flats of individuals living in the complex. The case of the plaintiff is that since they have entered into an individual contract with the residents, therefore, the Residents Association has no lawful authority to interfere into such business transaction which is in between two private parties. It is also the case of the plaintiff that their subscribers have no complaint against them, whereas, the Residents Association had demanded exorbitant charges / commission including payment of monthly charges in respect of each cable / internet connection, which according to the plaintiff is illegal and without any lawful authority and also falls outside the scope and

mandate of the Residents Association. Whereas on the other hand the case of the defendant No. 1 to 4 is based on the premise, that it is the responsibility of the Residents Association to manage and maintain the entire building complex. It has been further stated in the written statement that the plaintiff had been carrying out the installation of cables and wires in open areas and such conduct on the part of the plaintiff had become a cause of nuisance for the entire Residents of the complex.

7. After having perused the record and the entire evidence as well as the written statement filed on behalf of the defendants No. 1 to 4, I am of the view that the defendants No. 1 to 4 have no lawful authority to interfere in the installation of cable and internet services or any other related services being provided to the Residents which is entirely a private affair between the plaintiff and its customers. The defendant's No. 1 to 4 have no lawful authority to demand any compensation / commission in respect of such individual installation / rendering of services by the Plaintiff. At the most the defendant's No. 1 to 4 can only demand that such installation shall be carried out in a manner which may not cause disturbance to any of the residents, including the one on whose premises such installation is being carried out. From perusal of the written statement and the photographs annexed therewith, it appears that the primary concern of the defendants No. 1 to 4 in the instant matter is only to the above extent, whereas, the other demands so raised on behalf of the defendants No.1 to 4 appears to be without any lawful authority and cannot be acceded to by this Court.

8. In view of hereinabove facts and circumstances, instant Suit is decreed as prayed, however, the plaintiff shall carry out its installation in a manner which must not be a cause of disturbance to the other residents and further, the plaintiff shall carry out such installations whereby the cables and wires shall not be left open or unattended which can be of concern and disturbance for the entire Residential complex. Instant Suit is decreed in the above terms.

Dated: 13.05.2015

J U D G E

ARSHAD/