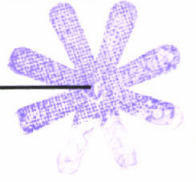


③

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No.160 of 2019

Order with Signature of Judge(s)



Fresh Case:

1. For order on CMA No.1094/2019 (Urgent)
2. For order on office objection a/w reply as at "A".
3. For order on CMA No.1095/2019 (Exemption)
4. For hearing of main case.
5. For order on CMA No.1096/2019 (Stay)

27.03.2019.

Dr. Shah Nawaz Memon, Advocate for the appellant.

1. Urgency granted.

2-5. Through this High Court Appeal, the appellant has impugned the order dated 22.02.2019 passed by the learned Single Judge in Suit No.1191 of 2017.

Dr. Shah Nawaz Memon Advocate has appeared on behalf of the appellant and stated that the learned Single Judge was not justified in directing to deposit an amount of Rs.74.70 million within one month's time with the Nazir. He stated that the suit for specific performance and injunction was filed by the present appellant as, according to him, he entered into a sale agreement dated 21.02.2017 with the respondent No.1 for a total sale consideration of Rs.83 million and paid 10% of the amount i.e. Rs.8.3 million leaving balance payment of Rs.74.70 million. He also stated that the learned Single Judge directed the appellant to deposit a sum of Rs.74.70 million with the Nazir till the matter is finally decided between the parties. He further stated that the appellant is not in a financial position to pay the said amount. He stated that till the time matter concludes ~~between~~ the parties due to devaluation of the rupee if the appellant deposits the amount of Rs.74.70 million he will financially suffer. He, therefore,

prayed for setting aside the interim arrangement as ordered by the learned Single Judge.

We have heard the learned counsel at length and have also perused the record.

We are of the view that the learned Single Judge was quite justified in directing the appellant to deposit an amount of Rs.74.70 million with the Nazir with further directions to the Nazir to invest the same in a profit bearing scheme, as it is the main contention of the appellant seeking declaration against the respondent No.1 to culminate the process of the sale already entered between the parties. Hence, when it is the claim of the appellant, as available from the record, that he is ready to pay the balance amount to the respondent No.1 so that the process of the sale agreement entered between the parties in respect of the Apartment bearing No.K-1604, Block-K, Type Penthouse-A, in Project known as Creek Vista Apartments, Phase-VIII situated in Pakistan Defence Officers Housing Authority, Karachi, could be culminated into a sale deed, the present excuse of not having sufficient funds and that due to devaluation of the rupee he would suffer are found to be the excuses which are not plausible. Had this case been decided in his favour he would have to arrange the funds of Rs.74.70 million in order to culminate the sale. Moreover from the record it is also evident that the respondent No.1 (defendant No.1) has categorically mentioned that he is ready to transfer the property in favour of the appellant (plaintiff) also leaves little room for the appellant to come up with the plea not to comply with the order of the Court on the ground that he is not having sufficient funds etc. Here a question would arise that if he is not having sufficient funds, how the sale process entered between the parties would culminate.

We, under the circumstances, find no justification to interfere in the order passed by the learned Single Judge and dismiss this High Court Appeal in limine alongwith the listed applications.

Judge

Order
I/Sheet 10
Wazir @ 2/2/19
on 28/3/19.
2

Judge

