

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.186 of 2022

[Muhammad Iqbal & another v. Muhammad Ashraf & others]

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito.

Appellants : Through Mr. Ali Abid Zuberi, Advocate

Respondent No.4-SBCA : Ms. Afsheen Aman, Advocate

Date of hearing & order : 20.04.2026

ORDER

ARSHAD HUSSAIN KHAN J; Through this High Court Appeal, the Appellants have called into question the legality and propriety of the ad-interim order dated **30.05.2022**, passed by the Learned Single Judge in Suit No.2666 of 2021. The relevant portion of the impugned order is reproduced hereunder:-

2. Through this application, learned counsel for the plaintiffs prays that defendants may be directed to maintain status quo as well as Defendant Nos.6 and 12 may be restrained from creating third party interest on the subject property. Let notice be issued to the Defendants. Till the next date of hearing, they are hereby restrained accordingly”.

2. The brief facts leading to the present High Court Appeal are that the Appellants, along with respondent No.11 and one Mrs. Naseem Bano, are partners in M/s Dream Home Associates and are engaged in the development of a project styled as “Samrina Grand” over Plot No. Com-6, admeasuring 2348.88 square yards, situated in Scheme-33, Gulshan Town, Karachi. Respondents No.1 and 2 (the Plaintiffs), claiming to be members of the housing society, instituted Suit No.2666 of 2021 and, in furtherance thereof, moved an application for interim relief (CMA No.19712 of 2021). It appears from the record that the said Plaintiffs were unable to secure any restraining order on earlier dates of hearing, including 20.12.2021. Thereafter, they filed a fresh urgent application, being CMA No.8611 of 2022, along with an application under Section 94 read with Order XXXIX Rules 1 and 2 C.P.C. (CMA No.8612 of 2022). It is the case of the Appellants that, without disclosing the earlier proceedings, including the rejection of

similar relief on prior dates, and without bringing on record the fact that a comprehensive counter-affidavit had already been filed by the Appellants, the Plaintiffs succeeded in obtaining the impugned *ex parte* ad-interim order dated 30.05.2022.

3. At the very outset, it is pertinent to note that this Court, vide order dated 02.06.2022, had already suspended the operation of the impugned ad-interim order, having prima facie been satisfied with the preliminary submissions advanced on behalf of the Appellants regarding suppression of material facts by the Respondents.

4. Learned counsel for the Appellants, while assailing the impugned order, vehemently contended that the same has been procured through a gross abuse of the process of the Court. It is argued that respondents No.1 and 2 deliberately sought urgent listing of the matter by moving a fresh application with a view to avoid the presence of the Appellants, despite being fully aware that the Appellants had already entered appearance and had placed on record all relevant documents, including requisite building approvals and NOCs. Learned counsel further submits that the subject project now stands physically complete, and any continued restraint would not only cause irreparable financial loss to the developers but would also seriously prejudice the rights and interests of bona fide third-party allottees, who have invested substantial amounts in the project. It is contended that the Appellants have duly complied with all regulatory requirements and possess valid NOCs and approvals issued by the Sindh Building Control Authority (SBCA) and Sindh Environmental Protection Agency (SEPA), as well as the concerned utility service providers, which documents were already available on the record of the learned trial court but remained unconsidered owing to the *ex-parte* nature of the impugned proceedings. It is further contended that the consistent non-appearance of the Respondents throughout these proceedings, even after suspension of the impugned order, vide order dated 02.06.2022, lends credence to the Appellants' assertion that the Respondents lack bona fides and have no genuine intent to pursue the matter on merits. Learned counsel lastly submits that, inasmuch as the project stands completed and an application for issuance of Completion Certificate has already been

submitted before the SBCA, there remains neither any legal nor factual justification for allowing the impugned ad-interim order to continue to operate in the field. On these premises, it is urged that the impugned order be set aside so as to prevent further miscarriage of justice and to safeguard the rights of the affected allottees.

5. Learned counsel appearing on behalf of the SBCA (Respondent No.4) has supported the stance of the Appellants with regard to the present status of the project. She submits that the Appellants have already approached the Authority for issuance of the Completion Certificate/Completion Plan, and the said request shall be processed and decided strictly in accordance with law.

6. A perusal of the record reflects that despite issuance of repeated notices and the grant of multiple opportunities to respondents No.1 and 2 to contest the present appeal, including an adjournment by way of last indulgence on 30.03.2026 with a note of caution, none has appeared on their behalf, nor has any objection or reply been filed. Such persistent non-appearance, coupled with failure to controvert the assertions made by the Appellants, gives rise to a strong adverse inference that the allegations regarding suppression of material facts are well-founded, and that the Respondents lack any tenable legal ground to sustain the impugned order.

7. Furthermore, the grant of an *ex-parte* injunction, being an extraordinary equitable relief, demands the utmost good faith and full and frank disclosure on the part of the applicant. In the present case, the failure of the Respondents to disclose that identical relief had earlier been sought and effectively declined in the same proceedings amounts to material concealment, which vitiates the very foundation of the impugned order. It is a settled principle that suppression or non-disclosure of material facts disentitles a litigant from equitable relief, particularly in matters involving interim injunctions granted without notice to the opposite party.

8. It is also pertinent to observe that the subject project has, by now, reached an advanced stage of completion and is stated to be in substantial compliance with the applicable regulatory framework.

Once a project attains the stage where an application for issuance of a Completion Certificate has been submitted to the SBCA, the balance of convenience ordinarily tilts in favour of the developer as well as the bona fide purchasers. In such circumstances, continuation of a status quo order would not advance the cause of justice; rather, it would operate to the detriment of third-party allottees, who are not privy to the inter se dispute between the parties but have invested their resources in the project. The law consistently leans against orders that result in undue hardship to innocent stakeholders and impede the fruition of a project at its final stage. Accordingly, maintaining the impugned restraint at this juncture would be inequitable and contrary to the settled principles governing the grant of interim relief.

9. In view of the foregoing discussion, the instant High Court Appeal is allowed. The impugned ad-interim order dated 30.05.2022 is hereby set aside. The learned trial court is directed to proceed expeditiously and to decide the underlying suit strictly on its own merits, without being influenced by any observations made in this order, preferably within a period of four (04) months from the date of receipt of a certified copy hereof.

JUDGE

JUDGE