

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1142 of 2003

[Pakistan Battery Mfg. Co (Pvt.) Ltd. & another v. Muhammad Fahad Farooqi & others]

And

Suit No. 1318 of 2007

[Mrs. Almas Farooqi and another v. M/s Pakistan Battery Manufacturing Co. (Pvt.) Ltd. and others]

- Dates of hearing : 29.01.2018 and 20.02.2018.
- Date of Decision : 09.03.2018.
- Plaintiffs : Pakistan Battery Mfg. Co (Pvt.) Ltd. And Hashmat Hussain Najmi, through Mr. Zubair Ahmed, Advocate.
- Defendants 1 & 3 : Muhammad Fahad Farooqi and Mrs. Almas Farooqi, through Mr. Munawar Malik, Advocate.
- Defendant No.2 : Sindh Industrial Trading Estate, through Mr. Iqbal Khurram, Advocate, along with Mr. S. Ayaz Hussain Farooqi.

Case law relied upon by Plaintiff's Counsel

1. P L D 1964 Supreme Court page-106
[*Abdullah Bhai and others v. Ahmad Din*]
2. P L D 1985 Karachi page-481
[*Muhammad Azim v. Pakistan Employees Co-operative Housing Society Ltd. Karachi and others*]
3. [1980] 1 AII ER 839
[*Verral v Great Yarmouth Borough Council*]
4. 2012 S C M R page-345
[*Muhammad Anwar v. Muhammad Aslam and others*]
5. P L D 2004 Supreme Court page-860
[*Bolan Beverages (Pvt.) Limited v. Pepsico. Inc. and others*]
6. P L D 2015 Sindh page-142
[*Pakarab Fertilizers Limited v. Dawood Hercules Corporation Limited and others*]
7. P L D 2011 Supreme Court page-680
[*Justice Hasnat Ahmed Khan and others v. Federation of Pakistan/State*]

Case law relied upon by Defendants' counsel

- Law under discussion:**
1. Contract Act, 1872.
 2. Specific Relief Act, 1877 (“SRA”)
 3. Qanun-e-Shahadat Order, 1984
(**Evidence Law**)
 4. Civil Procedure Code, 1908 (“CPC”)

J U D G M E N T

Muhammad Faisal Kamal Alam, J.: - Present suit has been filed, *inter alia*, for specific performance and the plaint contains the following prayer clause(s)_

- “1) *That the Defendant No.1 specifically perform the agreement dated 1st October, 2000 and do all acts necessary to transfer all his rights and interest in the Property to the Plaintiff and transfer the Property to Plaintiff.*
- 2) *That the Defendant No.1 apply to the Defendant No.2 for its N.O.C. to the transfer of the Property and in case of his failure Plaintiff is entitled to do so.*
- 3) *That the Defendant No.1 pay to the Plaintiff a sum of Rs.15,12,000/- as compensation for withholding performance.*
- 4) *That the Defendant No.1 and 2 be restrained by injunction from taking any action regarding the transfer of the Property except in favour of the Plaintiff.*
- 5) *Costs.*
- 6) *Other relief considered appropriate by this Hon’ble Court.”*

2. By this common Judgment, the two connected suits, whose descriptions are mentioned in the title can be decided. The present controversy of the titled suits (cases) basically is a result of tripartite relationship between the parties to the proceeding. Undisputedly, the

Defendant No.2 (SITE) is the lessor and licensor of the *suit property- SF Unit No.4, situated in SITE, together with the construction thereon,* whereas, Plaintiffs in Suit No.1142 of 2003 through the deceased father of present Plaintiff No.2, namely (late) Hashmat Hussain Najmi entered into the Memorandum of Understanding (“MoU”) dated 17.10.2000 (**Exhibit P/1**) with Defendant No.1-Muhammad Fahad Farooqi for purchasing the Suit Property, in which the afore-referred (Plaintiffs) were / are in occupation being the sub-licensee of private Defendant No.1. The Plaintiffs in Suit No.1142 of 2003 for the sake of reference only to be referred as the “**Claimants**” and private Defendants No. 1 and 3 (Muhammad Fahad Farooqi and Mrs. Almas Farooqi) can be referred to as the “**Objectors**”. Gist of the controversy is that though the authenticity of above MoU (Exhibit P/1) is not disputed, but what has been challenged by Defendant No.3 (the mother) is the authority of her son-Muhammad Fahad Farooqi, the Defendant No.1 to enter into such an agreement with the Claimants.

3. It is relevant to give a background of the litigation between the parties hereto. Earlier a Suit No.250 of 1997 was filed by the lessor-SITE against the present Defendant No.1-Muhammad Fahad Farooqi and his other brother Muhammad Faraz Farooqi for recovery of dues of Rs.5.3 Million and possession of the above Suit Property and another Unit viz. S.F. Unit No.1. According to Defendant-SITE, these units were earlier allotted the above persons. Suit No.250 of 1997 was earlier dismissed in default on 18.02.2005, whereafter remedial steps were taken by filing an application, but the said application was also dismissed by the Assistant Registrar as reflected from A. R. Diary of 07.09.2003.

4. The second suit is the present *lis* (Suit No.1142 of 2003) and the third suit latest in series is a Suit No.1318 of 2007, which has

been instituted by the present Objectors (Mrs. Almas Farooqi and Muhammad Fahad Farooqi) against the present Claimants and its CEO Hashmat Hussain, who since has passed away, is now being represented by his legal heirs. In this third case, the Objectors are claiming the arrears of rent since 31.03.2004 as well as Damages from the present Claimants. This last suit perhaps remained inactive on account of rent proceeding filed by the above named Objectors against the Claimants, which finally resulted in passing of the consent order dated 28.01.2008 in C. P. No. S-327 of 2006. This order is available on page-115 of the main file of Suit No.1142 of 2003 (present *lis*).

5. The other undisputed fact is the sale consideration as mentioned in the above MoU (Exhibit P/1) available at page-81 of the Evidence File, fixed at Rs.4.2 Million out of which Rs.100,000/- was paid on the signing of the said MoU and remaining amount of Rs.4.1 Million was deposited in the Court, which amount, the present Objectors have withdrawn under the Court permission but without prejudice to the stance of any of the parties.

6. It is further clarified that all the two suits were not consolidated, but following Issues were framed only in the leading Suit No.1142 of 2003 (the present *lis*)_

- “1. Whether agreement dated 01.10.2000 is specifically performable?**
- 2. Whether the Defendant No.3 could be party in suit in presence of original licensee i.e. Defendant No.1?**
- 3. In the circumstances, when the Plaintiff has paid / deposited the entire sale consideration to the Nazir, is he liable to pay the monthly rent also to the Defendant as tenant?**
- 4. Whether the Defendant No.1 was only nominee of the Defendant No.3?**
- 5. Whether during stay of the Hon’ble Court and prior license agreement, the Defendant No.2 can enter into new license agreement with the Defendant No.3?**

6. *Whether the contingencies in agreement dated 01.10.2000 are completeable?*
7. *Whether Memorandum of Understanding dated 01.10.2000 is executable under the law?*
8. *Whether the suit is maintainable in view of Clause-V of the M.O.U.?*
9. *Who is owner of the suit plot and what is the status of the Defendants?*
10. *Whether the Plaintiffs can maintain the suit?*
11. *Whether agreement executed in between S.I.T.E. and Mrs. Almas Farooqui in 2004 was a new agreement of continuity of the original agreement of 1991?*
12. *What should the decree be?"*

7. My findings on the above Issues are as under_

FINDINGS

ISSUE NO.1.	_____	Affirmative.
ISSUE NO.2.	_____	As under.
ISSUE NO.3.	_____	Affirmative.
ISSUE NO.4.	_____	Negative.
ISSUE NO.5.	_____	Negative.
ISSUE NO.6.	_____	Affirmative.
ISSUE NO.7.	_____	As under.
ISSUE NO.8.	_____	Negative.
ISSUE NO.9.	_____	As under.
ISSUE NO.10.	_____	Negative.
ISSUE NO.11	_____	As under.
ISSUE NO.12.	_____	Suit decreed with costs.

REASONS

ISSUES NO.8 AND 10:

8. Since Issues No.8 and 10 relate to the maintainability of present *lis*, therefore, same should be addressed first.

9. It has been argued by Mr. Munawar Malik, learned Counsel representing the Objectors / Defendants No.1 and 3, that the subject MoU since cannot be equated with the sale agreement and particularly Clause-5 thereof makes it a conditional document, therefore, the present *lis* is not maintainable. It is further argued that even otherwise, Defendant No.1 (Muhammad Fahad Farooqi) was not authorized to enter into such type of arrangement with the Claimants, as the Suit Property belongs to the mother (Mrs. Almas Farooqi). It is further submitted that in view of Clause-1 since no prior permission was obtained from Defendant No.2-SITE, therefore, on this ground as well the transaction in question is frustrated and present *lis* merits dismissal.

10. Mr. Iqbal Khurram, learned counsel representing the Defendant No.2-SITE supported the above arguments of learned counsel for the Objectors, while pointing out that there was inherent defect in the entire transaction, because when the above referred MoU was signed, the said Defendant No.1 (Muhammad Fahad Farooqi) was not the licensee and subsequently, his mother, the Defendant No.3, became the licensee by virtue of subsequent license agreement dated 19.02.2004, executed by Defendant No.2-SITE being the competent authority, in favour of the said Defendant No.3 (Mrs. Almas Farooqi). This agreement to license is also an undisputed document, which has been produced in the evidence as **Exhibit P/8**.

11. The above contention has been controverted by Mr. Zubair Ahmed, learned counsel for the Plaintiffs / Claimants in Suit No.1142 of 2003. He maintains that documents, including above MoU forming basis of the entire transaction are not disputed. Further contended that stance of Defendant No.2 is self-contradictory, which earlier in its above suit has specifically

stated that present Defendant No.1 (Objector) was / is the allottee of the Suit Property. He has placed reliance on the reported Judgment of the Honourable Supreme Court in Muhammad Anwar case (*ibid*). In this decision, the Honourable Apex Court has validated the conditional sale agreement in respect of a property and the plea of the Appellants was disallowed, that when agreement was entered into between the parties at that relevant time, Respondent No.1 did not acquire proprietary rights to sell his interest. It was further held that such type of agreements fall within the purview of Section 31 and 32 of the Contract Act, 1872, concerning the contingent contract and its enforceability.

12. It is correct that the MoU itself is not a disputed document, whereas in Suit No.250 of 1997, filed by the present Defendant No.2 (SITE), *inter alia*, present Defendant No.1 (Muhammad Fahad Farooqi) has been mentioned as the allottee of the Suit Property at that relevant time. The other issue, which required adjudication, is about the authority of Defendant No.1 (Objector), which can only be decided after a proper appraisal of the evidence. Accordingly, Issues No. 8 and 10 are decided in **Negative**; in favour of the present Claimants that the present suit as instituted is maintainable, but whether or not the Claimants / Plaintiffs are entitled to any relief, is to be decided after giving findings on the other Issues, which would be discussed in the following paragraphs.

ISSUE NO.2:

13. Since a subsequent license agreement was executed by Defendant No.2 in favour of Defendant No.3, therefore, this Court on 22.11.2004 joined the intervenor (Mrs. Almas Farooqi) as Defendant No.3, particularly when the authority of Defendant No.1 has been seriously challenged by his mother (Defendant No.3). Thus, this Issue is also answered accordingly that Defendant No.3 is a necessary party in the present proceeding.

ISSUES NO.1 AND 6:

14. These Issues are pivotal and go to the very root of the controversy.

15. Mr. Munawar Malik, Advocate for the private Defendants, has challenged the subject transaction on two grounds; firstly, while laying much emphasis on the subject MoU (**Exhibit P/1**), that it was not an ordinary agreement to sell and being conditional as apparent from its clauses-4 and 5, is therefore, a contingent contract as envisaged in Sections 31 and 32 of the Contract Act; and, secondly, the Defendant No.1 was not authorized to sell the suit property. Per learned counsel, since Defendant No.2-SITE, did not accord its permission, therefore, the entire transaction should fail and hence, no decree for Specific Performance can be granted. He has referred to the evidence of erstwhile Plaintiff's witness, the above named (Late) Hashmat Hussain Najmi, whose Affidavit-in-Evidence and deposition given in the Rent Case No.115 of 2004 has been filed in the present suit with the Affidavit-in-Evidence of D.W.-1 (Muhammad Shoaib Farooqi) who has deposed on behalf of Defendants No.1 and 3 (Objectors); the said D.W.-1 is the father of Defendant No.1 and husband of Defendant No.3, respectively. Per learned counsel of the private Defendants, the cross-examination of afore-named Plaintiff's witness was recorded in the referred Rent Case on 25.02.2006, wherein, he has admitted that the Defendant No.1 was only authorized to deal with Defendant No.2-SITE and further admitting that subject MoU is not a sale agreement.

The most significant aspect of the present case is that whether Defendant No.1 had the authority to sign the subject MoU.

16. The Claimants, in support of their claim that Defendant No.1 was duly authorized to sell the suit property to the Plaintiffs, being its lawful allottee, have produced in the evidence a letter dated 19.05.1991 as Exhibit P/6. This correspondence has been produced from the record of earlier

litigation between the SITE and Defendant No.1 (Objector No.1)-Suit No.250 of 1997. In this correspondence (**Exhibit P/6**), the Defendant No.3 (mother) had requested the Managing Director of Defendant No.2 that both the above mentioned units, which include the suit property, be transferred in the name of her two sons, including present Defendant No.1 and receipts of the payments be issued in their respective names. But the present Defendants on the contrary have relied upon a correspondence of the same date, which has been produced by the witness of SITE as **Exhibit D/2/2**, though the same correspondence is also produced by the Plaintiff's witness as Exhibit P/7. This is the letter of same date-19.05.1991, but contains alteration. The scrutiny of this correspondence shows that the correction is made in handwriting in those lines of earlier correspondence (**Exhibit P/6**), in which it was mentioned that both the units were purchased by Defendant No.3 on behalf of her two sons and **"receipts of the payments be issued in their respective names"**.

17. In order to appreciate the authenticity of the above documents (Exhibit P/6 and P/7) and the rival claims of the parties in the present proceeding, the pleadings of Suit No.250 of 1997 filed by the SITE against the present Defendant No.1 and his brother Muhammad Faraz Farooqi, has also been considered. It is the stance of present Defendant No.2-SITE being Plaintiff in above Suit No.250 of 1997 that on 19.05.1991, present Defendant No.3 (Mrs. Almas Farooqi) purchased the two units for her above named sons. The above Exhibit P/6 has been referred to by the SITE and it has been further stated in paragraph-5 of the above Suit No.250 of 1997, that on 25.07.1991 **both the units were then allotted to two sons, including present Defendant No.1**. Plaintiff's witness has produced a license agreement (**Exhibit P/3**) with Affidavit-in-Evidence; this license agreement is of 01.03.1992 granted by Defendant No.2-SITE, to Defendant

No.1-Muhammad Fahad Farooqi in respect of the Suit Property. From the perusal of the terms and conditions of this license agreement, which is an undisputed document, it is quite clear that it was for a period of five years but renewable. Sequence of events is important here. Earlier, letter of 19.05.1991 (**Exhibit P/6**) was subsequently acted upon by Defendant No.2 by granting the above license-Exhibit P/3 in favour of present Defendant No.1 (Muhammad Fahad Farooqi). **Thereafter** for recovery of their dues, present Defendant No.2 (SITE) filed above Suit No.250 of 1997 against present Defendant No.1 and his brother and not against present Defendant No.3 (Mst. Almas Farooqi). Now the Written Statement of Defendant No.2-SITE in the present *lis*, does not mention that the said Defendant No.1 was / is unauthorized person and his mother-said Defendant No.3 is the actual allottee and has the authority to sell the Suit Property. The SITE has mentioned the liability of Defendant No.1 towards the SITE in respect of the Suit Property. On the contrary, in paragraph-3 of their Written Statement (in the present *lis*), the SITE has even given conditional approval of the subject transaction under the MoU, subject to clearance of fees and charges of Defendant-SITE. The contradiction in the testimony of Defendants' witness is apparent; the latter on a subsequent date of proceeding, to a question about the afore-referred two Exhibits P/6 and P/7, replied, that it was initially written by the Defendant No.3 but was amended on the instructions of Defendant No.2-SITE. He has further admitted that rent was regularly paid by the Plaintiff from the date of inception till date; it means that up to 26.10.2011, when the statement of said witnesses was recorded, rentals were paid by the Plaintiffs.

18. All this leads to the result that in fact Defendant No.1 (Muhammad Fahad Farooqi) was the licensee, who had legal authority to enter into the subject MoU. Not only this, said Defendant No.1 enjoying an independent

status and authority when the latter (said Defendant No.1-Muhammad Fahad Farooqi) executed the afore-referred sub-license with the Claimants.

19. The stance of Defendant No.2-SITE is unfortunately contradictory, which should not be, being an autonomous entity. The finding that Defendant No.1 (Muhammad Fahad Farooqi) was the allottee / licensee and in effect had the authority and power to dispose of the Suit Property, which is a basic ingredient of ownership, at the time of signing subject MoU also finds its support from the evidence of the above named private Defendants' witness (Muhammad Shoaib Farooqi). The said witness in his cross-examination has not disputed the authenticity of the subject MoU and his signatures on the same as one of the witnesses. In his testimony, he has even admitted that the 'subject MoU was prepared and signed by the executants in my presence'. The said Defendants' witness has also acknowledged that SITE never cancelled the first license agreement, that is, the afore-referred document (Exhibit P/3), executed by SITE in favour of Defendant No.1. To a question, the said Defendants' witness has not denied that the subject MoU was an intention of sale of Subject Suit as well as for tenancy. The receiving of earnest money of Rs.100,000/- as referred above has also been acknowledged by the said Defendants' witness in his evidence. On this law point, the reported decision handed down by this Court in the case of Muhammad Azim (*ibid*) is very relevant, wherein, *inter alia*, it has been held that ***"If rights in land are given to a person for the purpose of constructions of a permanent nature, the presumption in law would be in favour of construing such a transaction as a lease rather than a license."***

20. The Plaintiff's witness has not been cross-examined on material part of his testimony when he produced different rent / licence fee bills

issued by Defendant No.2-SITE in favour of Defendant No.1. The testimony of Claimants' sole witness that the request of Defendant No.3 to transfer the Suit Property vide a correspondence dated 19.05.1991 (Exhibit P/6), was subsequently acted upon when besides signing of the afore-referred license agreement dated 01.03.1992 (Exhibit P/3), the SITE was issuing bills for recovery of its charges directly to Defendant No.1, has not been challenged in the evidence. These rent / license fee bills have been produced in the evidence as Exhibit P/13 to P/13/4 and are of various dates; 31.07.2005, 30.06.2006, 31.10.2007, 30.06.2008 and 31.01.2009. This, however, proves another relevant fact of present case, that the earlier license agreement between Defendants No.1 and 2 stood renewed as SITE was recovering dues from Defendant No.1 being a duly recognized licensee.

21. The evidence of Officer of Defendant No.2-SITE, namely, Mustafa Ali son of Murtaza Ali, is contradictory to his pleadings / Written Statement and cannot be believed. In paragraph-6 of his Affidavit-in-Evidence, he has falsely deposed that the Suit Property since 1991 remained in the name of Defendant No.3. It is contradictory to even undisputed official documents of SITE, particularly aforementioned license agreement of 01.03.1992; Exhibit P/3. To a suggestion for the above Exhibit P/7, which the said SITE's witness has produced as Exhibit D/2/2, he has denied that he has produced a faxed copy and not the original, though *ex facie* it is a facsimile version and not original.

Both learned counsel appearing for the Defendants could not disprove the Plaintiff's witness about his deposition and the documents produced by him, including a correspondence from Defendant No.2-SITE, available at page-141 and is of 07.04.2005, wherein, it has been mentioned that the Suit

Property stands in the name of Muhammad Fahad Farooqi / Defendant No.1.

22. The other obstacle, which the Plaintiffs have to surmount is the subsequent license agreement dated 19.02.2004 granted by SITE in favour of Defendant No.3 and has been produced in the evidence by SITE as **Exhibit D/2/3**; same was produced by Plaintiffs' witness as Exhibit P/8. It has been vehemently argued by the learned counsel representing all the three Defendants that in view of this legal and factual position, the earlier subject MoU is non-performable. The learned counsel for the Plaintiff in reply has referred to the A. R. Diary, which is part of the main Court file, to show that Defendant No.2 had the notice of present proceeding on 02.12.2003. The ad-interim injunction was granted on 27.10.2003 and the subsequent license agreement (Exhibit D/2/3) is of 19.02.2004, which has been executed by Defendants No.2 and 3 merely to frustrate the present proceeding and to reap benefits from their own wrongs. He has relied upon the reported Judgment of the Honourable Supreme Court handed down in Justice Hasnat case (*ibid*).

23. Undisputedly, the father of Defendant No.1 and husband of Defendant No.3, who has deposed on behalf of these Defendants, has not only admitted the subject MoU, but, also that he was one of the witnesses. Subject MoU clearly stipulates that Suit Property will be transferred by Defendant No.1 in exercise of its full and undisputed legal authority and control over the unit, on "AS IS WHERE IS" basis. If the present arguments of the private Defendants is accepted (for the argument's sake) then one conclusion can be, that either both father (witness) and son (Defendant No.1) on the relevant date of MoU played fraud upon the Plaintiff, or, the other conclusion is, that in order to frustrate the transaction in question, the issue about the competency and authority

of Defendant No.1 has been raised and to stragulate the present *lis*, the grant of subsequent Licence Agreement dated 19.02.2004 (Exhibit D/2/2) in favour of Defendant No.3 was made by Defendant No.2. In both cases, the attempt of the Defendants and their league *inter se* should fail.

24. Now adverting to the main defense as raised by the learned counsel of Objectors-private Defendants No.1 and 3, about the testimony of late father of present Plaintiff No.2 in the afore-referred Rent Case. The relevant portion of his testimony is at page-29 as part of the examination-in-chief / Affidavit-in-Evidence of present Defendants' witness. The erstwhile witness of the present Claimants has clearly stated that he was tenant of present Defendant No.1 (Muhammad Fahad Farooqi) and he refused to give rents to his mother, the present Defendant No.3. He has acknowledged during his cross-examination, that the subject MoU is not a sale agreement and said Muhammad Fahad Farooqi (present Defendant No.1) has nowhere mentioned himself as owner of the Suit Property. If this testimony is evaluated with the present evidence of the Claimants as well as the Objectors, then this testimony of erstwhile witness of present Plaintiffs, late Hashmat Hussain Najmi, as heavily relied upon by the present Objectors in their favour, hardly lends support to the case of the Objectors (the private Defendants). It is an admitted position about the subject MoU that by its very nature it was / is conditional, as discussed above. However, after taking into the account all the factors, the appraisal of the evidence and undisputed record, it is not difficult to hold that this agreement (MoU) was / is performable, because it fulfills all the ingredients of a contract, that is, offer, acceptance and sale consideration. As far as the arguments of Defendants' side is concerned about the contingency, the same also stood addressed in the preceding paragraphs, wherein, it has been mentioned that the present pleadings of Defendant No.2 (SITE) has in effect given the

conditional approval of the subject transaction. The condition about clearance of dues of SITE has also been complied with when it has come in the evidence as an undisputed fact as also acknowledged by the witness of SITE, that all the dues / premium / rent were paid, though upon execution of subsequent license agreement dated 19.02.2004 in favour of Defendant No.3. From this, one thing is clear that dues of SITE have been paid off. Consequently, to these findings, the dictum of **Muhammad Anwar** case (*supra*) is applicable, *inter alia*, wherein, the Honourable Apex Court while interpreting Sections 31 and 32 of the Contract Act, 1872, which relate to the contingent Contract, has validated a transaction, which was the subject matter of the reported Judgment, in which even, the seller (*of the above reported decision*) did not acquire the proprietary rights at the time of sale, which was granted subsequently. *Secondly*, when the above evidence of the deceased father of the present Claimants was recorded on 25.02.2006, at that relevant time, the subsequent License Agreement dated 19.02.2004 (as referred above) was already executed by Defendant No.2 in favour of present Defendant No.3. In this particular context, if the above evidence of erstwhile witness of the present Claimants is seen, it is not contradictory to the stance of the present Claimants. Issues No.1 and 6 are answered in **Affirmative** and in favour of the Plaintiffs, that subject MoU dated 17.10.2000 is specifically performable and contingencies mentioned therein are completable, which have been subsequently completed.

ISSUES NO.3, 4 AND 7:

25. It has already been discussed in the preceding paragraphs that the Objectors have withdrawn the entire sale consideration deposited by the Claimants vide consent order of 28.01.2008 (passed in above constitutional petition). For almost a decade, the Objectors are enjoying the said amount to their advantage. It has also come in the evidence and admitted by

defence witness (Shoaib Farooqi) of the Objectors, that up to 26.10.2011, the rentals were paid by the present Claimants to the Objectors. In these circumstances, Issue No.3 is answered in **Affirmative**, that having paid the entire sale consideration of the Suit Property, the Plaintiffs / Claimants are not entitled to pay monthly rent to the Defendants as tenants. Similarly, Issue No.4 has already been dilated upon earlier that Defendant No.1 was not the nominee of Defendant No.3, but was himself a licensee and was authorized to enter into the subject MoU. Hence this Issue is answered in **Negative** and against the present Objectors. Issue No.7 has already been answered while giving the affirmative findings on Issues No.1, 6 and 9, that the subject MoU is executable under the law.

ISSUES NO.5, 9 AND 11:

26. These Issues are also important to answer. From the arguments of the learned counsel for the parties and the undisputed record of the present case, it is a proven fact that despite having knowledge of present proceeding and operation of restraining orders, the Defendant No.2 granted the subsequent / new license dated 19.02.2004 to Defendant No.3. The conduct of SITE is deplorable because being an autonomous body, it should have acted in an impartial manner and not the way it has conducted itself in the present proceeding. Main object of the subsequent license agreement of 19.02.2004 (Exhibits D/2/3 and P/8), was to frustrate the present proceeding and, therefore, the above subsequent license executed between SITE and Defendant No.3 was a new agreement and not a continuation of original agreement of 1991. This new license Agreement of 19.02.2004 is tainted with *mala fides* and is the result of colorable exercise of power and authority vested in Defendant No.2. Thus, the subsequent license agreement dated 19.02.2004 (Exhibit D/2/3) is not a valid document having no legal effect. The Issue No.5 is answered in **Negative** and against the present

Objectors and Issue No.11 is answered accordingly as mentioned above, that new Agreement of 19.02.2004 in favour of Defendant No.3 is not a continuation of earlier License Agreement (Exhibit P/3), which was granted in favour of Defendant No.1 by SITE.

Adverting to the Issue No.9; the conclusion of the above discussion is that Defendant No.2 (SITE) is licensor / lessor of the Suit Property and Defendant No.1 is its licensee but subject to what has been held hereinabove about the status of such type of license, who duly entered into subject sale transaction with the Plaintiffs.

ISSUE NO.12:

27. The upshot of the above is that present suit is decreed in terms of prayer clauses (1), (2) and (4) only, jointly and severally against all the Defendants. Since the Specific Performance of subject MoU is allowed, subject to codal formalities of Defendant No.2, therefore, the claim of compensation of Plaintiffs is rejected. Accordingly, Suit No.1318 of 2007 has also become infructuous and it is also necessary to point out that till date in the said suit, parties hereto have not even attempted to lead the evidence. Accordingly, Suit No.1318 of 2007 is dismissed with not order as to costs.

28. Looking at the conduct of Defendants, the Plaintiffs are also granted costs of the present proceedings.

Judge

Karachi dated: 09.03.2018.

Riaz / P.S. *