

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit No.1613 of 2017**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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**Plaintiff:** Ghulam Hussain Khalikdina Trust Through  
Mr. Taha Alizai, Advocate.

**Defendants:** Adil Shabbir & 2 others Through  
Mr. Arshad Tayyably, Advocate.

1. For hearing of CMA No.11005/2017
2. For hearing of CMA No.9965/2017
3. For Orders on Nazir Report dated 24.11.2017

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**Dates of Hearing:** 18.01.2018, 24.01.2018 & 13.02.2018  
**Date of Order:** 09.04.2018

**ORDER**

**Muhammad Junaid Ghaffar J.** This is a Suit for Declaration, Injunction, Mesne Profit and Possession through which the Plaintiff seeks a declaration to the effect that the Defendants are in illegal and unauthorized possession of the Suit property, and there is no relationship between the Plaintiff Trust and the Defendants and a permanent injunction for restraining the Defendants from using the property for any business/commercial activity. Through application listed at Serial No.2 (CMA No.9965/2017), the Plaintiff seeks a restraining order during pendency of this Suit against the Defendants from using the Suit Property for any business or commercial activity.

2. Precisely the facts, as stated, are that the Plaintiff is a Trust which owns various properties including Plot No.21, Sheet No.FT-2, Frere Town, House No.4, Chaudhry Khaliq-uz-Zaman Road,

Karachi. It is further stated that in 1981 *Mr. Habib Fida Ali* (since deceased) entered into a lease arrangement as an individual with the Plaintiff Trust for renting the Suit Property for residential purposes and it is case of the Plaintiff that he remained a tenant till the year 1994 & 1995 on a verbal understanding, whereafter, the Lease Agreement was reduced in writing. To substantiate this claim, the Plaintiff relies upon two Agreements as well as Letter dated 30.05.2005. It is further stated that in January, 2017 Mr. Habib Fida Ali passed away and then it came to the knowledge of the Plaintiff Trust that certain individuals are illegally occupying the property and a Letter dated 24.02.2017, was issued to such occupants which Letter was responded by Defendant No.1, wherein, they stated that it was not Mr. Habib Fida Ali as an individual, who was the tenant; but it was the Firm of Habib Fida Ali, of which the Defendant No.1 is also a partner and was the actual tenant. It is further stated that the Plaintiff Trust was served with a notice of Miscellaneous Rent Case No.425/2017 and upon further enquiry it has come to the knowledge of the Plaintiff that the Suit Property is illegally being used for commercial/business activity by the Defendants, hence instant Suit.

3. Learned Counsel for the Plaintiff has contended that since 1981, firstly through a verbal arrangement, and thereafter, through correspondence and agreement in 1994-1995 it is a matter of record that the Suit Property was rented out for residential purposes to an individual namely Mr. Habib Fida Ali. In support learned Counsel has referred to Annexure "P-7" at Page-55. Learned Counsel has also relied upon Annexure "P/11" at Page 69, which is Letter dated 30.05.2005 and has contended that the

same was addressed to Mr. Habib Fida Ali when he had made an attempt to deduct advance income tax from rental payments, and it was categorically informed that since the residential house has been rented out by the Trust in your individual capacity, you are not required to deduct any tax henceforth from the monthly rent paid to the Trust. Learned Counsel has also read out the contents of the Misc. Rent Case No.425/2017. Per learned Counsel the Defendants have allegedly relied upon a Partnership Deed dated 01.12.2012, whereas, the Plaintiff Trust never entered into any agreement with the Partnership Firm and only relation which they had was with Mr. Habib Fida Ali. Learned Counsel has further contended that the Plaintiff Trust was never privy to any fact that Mr. Habib Fida Ali besides residing in the property, was also doing his consultancy business even as an individual, and therefore, the Defendants, who are in illegal possession cannot at the least use the property for any commercial activity.

4. On the other hand, learned Counsel for the Defendants has contended that though property in question was rented out to Mr. Habib Fida Ali, but since inception of his professional activity as an Architect, this very premises was being used as an office in a portion of the Suit Property. According to the learned Counsel this is a well-known and admitted fact that Mr. Habib Fida Ali was operating his consultancy business since long on this property and thereafter in the year 2012 a Partnership came into existence between Mr. Habib Fida Ali and the present Defendants, whereas, the name of the Firm was and still remains to be "Habib Fida Ali". Per learned Counsel this fact was known to the Trustees of the Plaintiff Trust as they had very cordial and personal relationship with late Mr. Habib Fida Ali, and now suddenly after his death,

they have come up with this plea that he was only residing in this premises and was not running any consultancy, which is strange and surprising. Learned Counsel has also referred to Para-5 of the Plaintiff and has contended that in fact it is the Plaintiff's own case that they are facing difficulty in managing various properties and collecting rents, therefore, they have taken a decision to dispose of various properties including the Suit Property, and therefore, according to the learned Counsel through this Suit they have made an attempt to bypass and circumvent the legal procedure provided under the Sindh Rented Premises Ordinance, 1979 for dealing and evicting the tenants. Learned Counsel has then referred to the lease documents itself relied upon by the Plaintiff Trust, and has contended that nowhere it has been specifically provided or stated that the property is being rented exclusively for residential purposes. Learned Counsel without prejudice has further contended that deceased Habib Fida Ali was issueless, whereas, since long the sister and nephew, who are his legal heirs were residing in the Suit Property along with him, have now become statutory tenants, and therefore, the appropriate remedy lies before the Rent Controller. Learned Counsel has referred to various receipts annexed with the written statement and has contended that since long the payment has been received by the Plaintiff Trust from the Firm "M/s. Habib Fida Ali" and not from any individual in the name of "Habib Fida Ali". Learned Counsel has also referred to Annexure "C" onwards at Page 317 of the written statement and has contended that it clearly establishes that much prior to his death Mr. Habib Fida Ali was using this property, after renovation, as his place of consultancy. In support he has further relied upon various correspondence made with contractors and

clients, who have all along made correspondence with the Firm “M/s. Habib Fida Ali” on the address of the Suit Property. Learned Counsel has also referred to Annexure “D-1” of the Written Statement, which is a Letter by Excise and Taxation Officer and has contended that way back in the year 1981 while making assessment of the Property Tax, which was to be paid by Mr. Habib Fida Ali, it has come on record that the premises was being used by the Firm “M/s. Habib Fida Ali” as an office. Learned Counsel has also relied upon utility bills of K-Electric and has contended that the charges being paid for electricity are under the “Industrial” category and not under “Residential”. Finally in the alternative, learned Counsel has contended that this is by now a settled proposition that use of a residential accommodation by a professional for rendering service is not to be termed as a commercial activity and in support he has relied upon **2004 CLC 293** (*Dr. Shagufta Hussain and another v. Water and Power Development Authority through Chairman and 4 others*), **AIR 1984 SC 1700** (*V. Sasidharan v. M/s. Peter and Karunakar and others*) and **PLD 1979 Lahore 398** (*Gul Afzal Khan v. Muhammad Hanif Arif*).

5. While exercising the right of rebuttal, learned Counsel has contended that Letter dated 30.05.2005 Annexure “P-11” confirms that the Plaintiff never admitted the use of property by Mr. Habib Fida Ali as commercial, whereas, since 1996 to 2012, there was no partnership into existence. Learned Counsel has further submitted that the rent which is being charged was in respect of a residential property, otherwise the quantum would have been much higher. According to the learned Counsel the Defendants are trespassers and there is no relationship of landlord and tenant with them, and

therefore, till such time the Suit is finally adjudicated, they may be restrained from using the same for commercial purposes.

6. I have heard both the learned Counsel and perused the record. Through this Suit, the Plaintiff seeks a Declaration to the effect that Defendants are in illegal, unlawful and unauthorized possession of the Suit Property and further declaration that there is no relationship between the Plaintiff Trust and the Defendants. Along with this prayer of declaration they also seek permanent injunction for restraining the Defendants directly or indirectly, whether in the name of Firm of "M/s. Habib Fida Ali" or otherwise from residing or using or otherwise occupying the property with a further prayer of permanent injunction restraining the Defendants from using the property for any purpose, including the undertaking/ business/commercial activity in the name of Firm M/s. Habib Fida Ali or otherwise. The precise case of the Plaintiff is twofold. One, the Defendants are trespassers and they do not recognize them as tenant. Two, even if they are occupying the premises without lawful authority, they cannot at the best be permitted to use the same for commercial and/or business activity. It is not in dispute, rather an admitted position that Plaintiff rented out the said property to Mr. Habib Fida Ali in 1981 as stated in the Plaintiff. The question that whether subsequently Mr. Habib Fida Ali created a Partnership Firm with the same name and inducted present three defendants as his partners or not is a question, which cannot be determined at this stage of the proceedings, therefore, I have restrained myself on examination of various documents annexed with the Plaintiff as well as with the written statement and counter affidavit. This I have done for two reasons; one it may affect the trial in this case and second there is one

Misc. Rent Case pending before the Rent Controller filed by the Defendants. For me to adjudicate the present application, it would only be appropriate to examine the record for arriving at a just and fair conclusion that whether Mr. Habib Fida Ali, who was admittedly the tenant of Plaintiff, was using the Suit Property in his life time for residential purposes exclusively or so also for his office and business as well as consultancy service. For that I would like to refer to Page 377, Annexure "D-1" of the Written Statement which is a letter by the Excise & Taxation Department, Karachi, which reads as under:-

"To,

M/S Ghulam Hussain Khaliqdina Trust  
C-V/49, Frere Town, Karachi

SUBJECT: ASSESSMENT OF P.U. NO. C-V 49 (4 THIS ROAD)

Dear Sir,

Please refer to your letter dated \_\_\_-\_\_\_-81. In this connection you are hereby informed that the assessment of Rs. 19248/- proposed vide this office Notice dated 6.6.81 was in respect of 4 rooms and a reception office, which are air-conditioned and occupied by M/s. Habib Fida Ali. The covered area of above portion is 1604 sq. ft. which are assessed @ Rs. 1/-- per sp. Ft. per month. These petitions have been assessed w.e.f. 1.7.1976. Since no objection was filed, the proposed valuation was confirmed on 05.7.1981 U/S-9(b).

The challan for the current year (81-82) as well as for balance arrears were served on the site. A copy of challans are also enclosed herewith for payment up-to 31.8.1981

Your faithfully,

EXCISE AND TAXATION OFFICER  
B&C DIVISION KARACHI"

7. Perusal of the aforesaid document, which pertains to the year 1981 (exact date is not clear) reflects that it is a Letter issued by Excise & Taxation Officer and addressed to the Plaintiff Trust and states that in response to your letter, you are hereby informed that the assessment of Rs.19,248/- proposed vide this officer Notice

dated 6.6.1981 was in respect of *four rooms and a reception office*, which are air-conditioned and occupied by "M/s. Habib Fida Ali". The contents of this letter clearly reflects that the assessment of the property in question was being made for some tax purposes and there is discussion about four rooms and a reception area, whereas, occupant is "M/s. Habib Fida Ali". I may observe that a reception is always part of an office and not residential premises. Secondly, this correspondence is in respect of "M/s. Habib Fida Ali". The next document is Annexure "E" of written statement at Page 381, which is a Letter by Capital Development Authority dated 14.04.1993 and is again addressed to "M/s. Habib Fida Ali" on the address of the Suit Property and refers to payment of design charges for the Project i.e. designing of the Presidential House at Islamabad. This also affirms that Mr. Habib Fida Ali, who is admitted as tenant by the Plaintiff was in the year 1993 using the Suit Premises for his professional and consultancy services and again I may observe that Letter is addressed to "M/s. Habib Fida Ali" and not to "Mr. Habib Fida Ali". There are various other documents of same nature at Page 383 onwards of the written statement and they clearly reflect that insofar as the usage of the Suit Property in question is concerned it was admittedly being used by "Mr. Habib Fida Ali" or "M/s. Habib Fida Ali" for their professional business services. It is also important to note that the Defendants have annexed the electricity bills issued by K-Electric (Annexure "F" onwards Page 401) and they too clearly reflects that the class of the consumer on the said premises is categorized as industrial and not as residential. This again leads credence to the contention that in his life time Mr. Habib Fida Ali was using this premises for his professional and business services. The learned



Counsel for the Defendants has also placed on record a Book titled as **“The Architecture of Habib Fida Ali”** and at Page 184 there is a brief discussion about the Architect’s Residence, its conservancy and adaptive use which reads as under:-



**“ARCHITECT’S RESIDENCE, KARACHI**

Shadily secluded amidst the bustle of Karachi, stands this colonial house, among flats, office buildings and a busy flyover. There were originally, seven houses of this genre, but this was the only one left standing. When HFA was shown the house by a friend in the early 1970s, he fell in love with it. He acquired it without seeing the insides or realizing how much work had to be done to revive the structure. It took two years to restore and adapt it for use. The gardens were replanted and extended. **Two low single-storey buildings on the grounds were converted to serve as HFA offices.**

White-washed rooms, strongly accentuated arches, alcoves and colonnaded verandas (now enclosed), are minimally furnished and decorated with works of art. Many spaces overlook the cool garden

oasis. The house hints at lightness of touch and subdued elegance. Here in the architect's personal domain are trees, shrubs and palms, gravel paths and herbaceous borders, gently echoing the vanished days of the British Raj."

Along with this a map/sketch of the property in question is also clearly printed, which reflects that the house in question after its uplifting and renovation was partially being used as an outhouse office. See Serial No.3 below in the map/sketch.



8. In view of hereinabove facts and circumstances and as observed earlier that I have confined myself only to the prayer in the injunction application and purposely not made any discussion in respect of the relationship of the Defendants with the Plaintiff Trust and so also on the fact that whether the legal heirs of Late Habib Fida Ali have become statutory tenants or not and can be evicted without due process under the Sindh Rented Premises Ordinance, 1979; but on the basis of the above discussion and the documents placed on record, I am of the view that it cannot be

disputed that Late Habib Fida Ali was using this premises for his professional and commercial activities, which was all along within the knowledge of the Plaintiff and they cannot at this stage of the proceedings come before the Court and deny such usage of the property by Late Habib Fida Ali. In such circumstances, in my view the Plaintiff has failed to make out any prima-facie case nor balance of convenience lies in their favour and in fact irreparable loss, if any, would be caused to the Defendants if injunctive relief as sought is granted and not to the Plaintiff as it is not a case, wherein, the Plaintiff is claiming any monetary losses in respect of rent of the property, which has been duly deposited by the Defendants with the Rent Controller. Accordingly, the listed application at Serial No.2 (CMA No.9965/2017) is hereby dismissed.

9. Application at Serial No.1 and Nazir Report at Serial No.3 are adjourned.

Dated: 09.04.2018

Judge