

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

High Court Appeal No.333 of 2016

Delhi Mercantile Muslim Cooperative Housing
Society Limited Karachi
Versus
Alamgir Welfare Trust International and another

For the Appellant : Mr. Basil Nabi Malik
Advocate

For the Respondent No. 1 : Mr. Asim Iqbal and
Ms. Mariyam, Advocates.

Date of Hearing : 07.04.2018

JUDGMENT

Agha Faisal, J: The present appeal assails the order of the learned Single Judge dated 20.10.2016 (“**Impugned Order**”), rendered in Suit No. 2179 of 2016 (“**Suit**”), whereby an application seeking interim relief was dismissed. The learned Single Judge, vide the Impugned Order, denied the grant of interim injunction sought by the present Appellant in respect of property, being shops AM-5 and 6 located on the ground floor of Building 3 Plot PA-60 Alamgir Road Karachi (“**Suit Property**”), subject matter of the Suit.

2. The brief facts of the case are that the Appellant, being the landlord, has filed proceedings for eviction against the respondent No.1, being the tenant, before the Rent Controller of appropriate jurisdiction on the primary premise that the respondent No.1 is tearing down the Suit Property and is also making substantial and

structure changes thereto. Notwithstanding the pendency of the proceedings for eviction, the Appellant filed the Suit before this Court and claimed relief principally predicated on the same grounds as had been invoked in the rent proceedings referred to supra. The injunctive relief prayed for by the Appellant in the interim application, subject matter of the Impugned Order, sought an order staying the alleged tearing down and substantial structural alteration perpetrated upon the Suit Property. However the learned Single Judge dismissed the application for interim injunctive relief.

3. Prior to the rendering of the Impugned Order, the Appellant made an application seeking an inspection of the Suit Property. It was averred by the Appellant, in the affidavit accompanying the application seeking inspection, that the inspection report would clearly corroborate the primary contention of the Appellant that the Suit Property is being torn down and that substantial structural changes are being made thereto unlawfully by the respondent No.1. The inspection sought by the Appellant was granted and a report in respect thereof dated 19.10.2016 was submitted before the Court. It may be pertinent to reproduce the relevant passage from the said inspection report:

“The representative of the plaintiff pointed out towards a shop on the top of which a board with defendant No.1’s name was written was affixed. The front of shop was covered with qanats. Some staff members of defendant No.1 were also standing there. (Photos enclosed as A-1 & A-2). I asked them to remove the qanats. I entered in the shop. No masonry work and / or construction material item was found there. The tiles affixed on the walls of shop looked to be fresh pieces. False-ceiling of the roof was almost complete but a little piece was yet to be finished. Some electric wires were lying open however nobody was found at the site doing electric work. (Photos enclosed as B-1 to B-3). About two wooden frames, one wooden stool and some wooden pieces were lying inside

the shop but at the time of inspection nobody was found working there. (Photos enclosed as C-1 to C-4).”

4. Notwithstanding the observation of the learned Single Judge, in the Impugned Order, that an order for inspection of the Suit Property should have been obtained from the Court of the Rent Controller by making an application under Section 20(c) of the Sindh Rented Premises Ordinance 1979 (“**SRPO**”), it was manifest from the inspection report that the same did not corroborate the assertions and allegations of the Appellant.

5. The learned Single Judge proceeded to dismiss the injunction application of the Appellant and the operative passage of the Impugned Order is reproduced herein below:

“4. In view of the above facts and law, the plaintiffs have not been able to make out a prima facie case for grant of injunction. The defendant No.1 has obtained the possession of premises under the tenancy agreement and he is paying rent regularly. The plaintiff has not complained for non-payment of rent even in his eviction application (annexure E/1). The Commissioner's report does not suggest that any damages has been done to the suit premises by defendant No.1. To the contrary, the Commissioner's report suggest that the tiles were fixed on the walls of the shop to give a fresh look. False-ceiling in the suit premises cannot cause damage to the suit property and the electric wire in the False-ceiling or wooden frames lying inside the shop could not be treated as any structural change in the suit premises. The inspection report in fact has damaged the claim of the plaintiff. Restraining orders would cause inconvenience and irreparable loss to defendant No.1, as he would not be able to enjoys the benefits of running his business in the shop she has acquired under a legally binding tenancy agreement which are suit premises and irreparable loss would be caused not only in terms of business loss but also in terms of the rent which he has already paid to the plaintiff.

5. In view of the above facts and discussion this application is dismissed with cost of Rs.20,000/- to be deposited within 15 days with the Nazir of this Court in favour of High Court Bar Clinic.”

6. Learned counsel for the Appellant argued that the Impugned Order is inconsonant with the law and his contentions in regard thereof may be encapsulated as follows:

i. It was submitted that the Impugned Order was in disregard of the law that entitled the Appellant to maintain proceedings concurrently before the Rent Controller and the Court of original civil jurisdiction.

ii. It was next contended that the learned Single Judge had erroneously held that the Appellant is estopped from agitating an identical cause of action in the Suit and in the proceedings before the learned Rent Controller.

iii. It was further argued that even if it is assumed that the cause of action are identical, the Appellant was duly entitled to seek the mutually exclusive relief before the independent juridical fori.

iv. It was thus contended that eviction proceedings are exclusively within the jurisdiction of the Rent Controller, hence the Appellant has instituted Civil Suit for seeking of relief other than eviction.

v. In support of his contentions, the learned counsel for Appellant placed reliance upon the authorities reported as follows:

1. Parmeshwari Das Khanna v. Bhola Nath Parihar reported as AIR 1981 Delhi 77 ("**Khanna**").
2. Kamal Malhotra and others v. Mahender Singh reported as ILR (2010) Supp.(4) Delhi 697 ("**Malhotra**").
3. Manakarani Hazra and others v. Mohinder Singh Jaggi and Another reported as AIR 1968 418 ("**Hazra**").

4. Dr. Haider Ali Mithani and another v. Ishrat Swaleh and others reported as PLD 1999 Karachi 81 (“**Mithani**”).
 5. Salim Industries Limited v. Messrs Burhani Co. and another reported as 1982 CLC 973 [Karachi] (“**Salim Industries**”).
 6. Messrs Sign Source through Partner v. Humayun H. Baig Muhammad reported as 2007 YLR 2287 at 2294 [Karachi] (“**Sign Source**”).
 7. Muhammad Jamil v. Mst. Zohra Begum and others reported as 1998 CLC 776 at 780 [Karachi] (“**Jamil**”).
 8. Aijaz Ahmed Zubari v. The Xth Civil Judge & Rent Controller, Karachi and 4 others reported as 1984 CLC 3445 [Karachi] (“**Zubairi**”).
 9. Industrial Development Bank of Pakistan v. Allied Bank of Pakistan and another reported as PLD 1986 Supreme Court 74 (“**IDBP**”).
 10. M. K. Abbasi v. United Bank Ltd reported as 1983 CLC 482 at 485 [Karachi] (“**Abbasi**”).
 11. Salim Foot-Wear v. Abdul Hakim and another reported as 1982 CLC 1406 [Karachi] (“**Salim Footwear**”).
- vi. Lastly, it was argued that it could be inferred from observations of the learned Single Judge in the Impugned Order that the Suit has already been determined to not be maintainable, despite the fact that no challenge to the maintainability of the Suit had been made by the respondents (defendants therein) as of yet and that no hearing has been conducted in regard thereof.

7. Learned counsel for the respondent No.1, exercising his right of reply, submitted that the contentions of the Appellant are in due dissonance with law and that the Impugned Order duly conforms to the prescriptions of law, justice and fair play. The arguments of learned counsel for the Respondent No.1 may be summated as follows:

i. It was contended that the Appellant has already approached the Court of competent jurisdiction, being the Court of learned Rent Controller and that the issue being agitated therein cannot be subjected to adjudication before another Court.

ii. It was argued that an independent assessment of the facts, being the report of the Commissioner, clearly demonstrates that the allegations of the Appellant are contrary to the actuality.

iii. It was stated that the Suit was employed by the Appellant as an instrument to pressurize and coerce the respondents and also to prejudice the proceedings underway before the learned Rent Controller.

iv. In conclusion, it was argued that the Suit was prima facie not maintainable and if the same were allowed to perpetuate then the proceedings before the Rent Controller would stand redundant.

8. We have heard the learned counsel for the parties and have also considered the record available on file. The primary issue before this Court is to determine whether the denial of injunctive relief by the learned Single Judge suffers from any legal infirmity that would merit inference in appeal.

9. The Appellant's application seeking interim injunctive relief with respect to the Suit Property was predicated on the allegation that the Suit Property was being torn down and subjected to substantial and structural changes.

10. The only available assessment in regard hereof is the inspection report, which clearly contradicts the position maintained by the Appellant, therefore, it can safely be said that no prima facie case for injunctive relief was made out.

11. In addition thereto the learned Single Judge was also of the considered view that "*The Plaintiffs seem to have malafidely filed the instant suit against his tenant and obtained ex parte orders may be with the view to create some evidence to be used in the Court of the Rent Controller*".

12. The determinant factors for grant of interim relief have been defined ad infinitum in numerous pronouncements of the Superior Courts and one such discourse was reported in the case of *Mst. Saeeda v. Province of Punjab and others reported as 2013 CLC 454*:

"9. It is well settled law that an injunction is not to be granted only on the basis that a prima facie case exists in favour of the plaintiff. The Courts are required to take into consideration whether the question of balance of convenience or irreparable loss to the party seeking such relief coexists or not. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court reported as *Marghub Siddiqui v. Hamid Ahmad Khan and 2 others (1974 SCMR 519)*.

10. It is also a settled principle of law that besides the above factors the Courts in the facts and circumstances of a case have to take into consideration certain other factors such as whether the plaintiff has approached the Court with clean

hands or not; whether the Court has been approached promptly or not; whether the grant of an injunction will be against public interest/policy; whether grant of an injunction to a party shall result into an undue advantage being given to him which would perpetuate injustice and whether a party approaching the Court for interim relief has concealed material facts and/or acted in a mala fide manner. In case the answer of any of the questions is in the affirmative then the relief of an injunction being discretionary in nature can be declined. Reliance in this regard is placed on a judgment reported as *ATCO Lab. (Pvt.) Limited v. PFIZER Limited and others* (2002 CLD 120).”

13. The learned Single Judge considered the lack of a prima facie case made out before him coupled with the view taken regarding the malafides of Appellant and further maintained that the respondent No.1 would be subjected to an unmerited detriment if injunctive relief was granted. This demonstrates that that the balance of convenience in such regard was perceived to have been tilted in favor of respondent No.1. There is ample authority to suggest that the balance of convenience must be evaluated by a Court when considering interim relief so that any order passed could not be employed as an aid towards injustice. Reliance is placed in such regard upon the pronouncements in *Puri Terminal Ltd vs. Government of Pakistan through Secretary, Ministry of Communications and Railways Islamabad and 2 others* reported as 2004 SCMR 1992 and *Irshad Hussain v. Province of Punjab and Others* reported as *PLD 2003 Supreme Court 344*.

14. It is the view of this Court that the learned Single Judge has exercised his discretion and arrived at the conclusion leading to the dismissal of the application seeking injunctive relief. The discretion for the grant of interim relief vests in the Court seized of the matter and unless it could be demonstrated that such discretion was exercised arbitrarily, in a perverse manner or against the settled principles of law there would be no occasion to merit interference in

the exercise of such discretion. This view is bulwarked by the pronouncement of the august Supreme Court in the judgment reported as *Syed Weedhal Shah through legal heirs and others vs. Province of Sindh through Deputy Commissioner, Khairpur and others* reported as 2002 SCMR 777.

15. While there is no cavil to the proposition that different proceedings are required to be employed to seek eviction of a tenant and to claim damages therefrom, it is however the timing and order of precedence of such proceedings that are of the essence herein.

16. If the determination of whether or not the Suit Property has been torn down and / or subjected to substantial structural changes is already pending adjudication before a Court then to seek a similar determination from another Court at the same time, albeit seeking different relief could lead to the unwelcome spectre of inconsistent judgments. Even if the judgments are not inconsistent the finding first in time may prejudice the proceedings that remain to be concluded.

17. In the present circumstances when (and if) the factum of whether or not the Suit Property has been torn down and / or subjected to substantial structural changes has been determined the aggrieved party is free to approach the relevant fori for any relief that may be the entitlement thereto. However, the determination of the primary factum may be undertaken by the Court first seized of the matter.

18. The authorities cited by the Appellant are duly distinguishable in the present facts and circumstances for the reasons ascribed in seriatim herein below:

- i. Khanna* is a decision of the honorable High Court of Delhi which recognized the possibility of a suit for injunction when the damage to the property may not qualify as “substantial damage”, which is one of the grounds for eviction under the Dehli Rent Control Act 1958. The judgment had maintained that a landlord need not resort to proceedings for eviction of the tenant if another suitable remedy under the general law was available to him. However, this was an either or situation and there was no question of two parallel proceedings being instituted and proceeded with concurrently on the same basic premise regardless of whether or not the relief sought was mutually exclusive.
- ii. Malhotra* is another decision of the honorable High Court of Delhi and it deals with the unauthorized sub-letting of property by tenants. It was held that a suit for injunction would be maintainable by a landlord against a tenant when there is a threat by the tenant that he is proposing to sublet the rented premises to an unauthorized party. Once again this judgment does not lend any sanction to parallel proceedings predicated upon the same grounds.
- iii. Hazra* is a decision of the honorable High Court of Orissa which expounds the principle that an order of eviction is not sustainable if it is based upon inadmissible evidence. This

pronouncement does no merit to the argument of the Appellant herein.

iv. Mithani is a Divisional Bench Judgment of this honorable Court which delineates the essential ingredients requisite for the stay of a suit if two suits were adjudicating upon the same issue. This judgment does not favor the Appellant and on the contrary may be construed as favoring the contentions of the respondent no. 1.

v. Salim Industries is a Judgment of a Single Bench of this honorable Court which also deals with issues discussed in *Mithani*. Once again the pronouncement lends no credence to the arguments of the Appellant.

vi. Sign Source is another Judgment of a Single Bench of this honorable Court and it differentiates the jurisdiction between the Courts of plenary jurisdiction and that of a Rent Controller. This judgment differentiates between the two fori and does not in any matter sanction two proceedings running parallel in different Courts upon the same grounds.

vii. Jamil is another Judgment of a Single Bench of this honorable Court and it also expounds upon the respective powers of the Rent Controller and Civil Courts. This judgment, much like *Sign Source*, is of no merit to the Appellant for the same rationale as cited supra.

viii. *Zubairi* is a Divisional Bench Judgment of this honorable Court which stipulated that the order of a learned Rent Controller could not be set aside by a Civil Court. This pronouncement also does not further the case of the Appellant.

ix. *IDBP* is a Judgment of the august Supreme Court pertaining to recovery of outstanding bank loans and we are at a loss to understand how the said citation is pertinent to the facts at hand.

x. *Abbasi* is a Judgment of a Single Bench of this honorable Court and it deals primarily with relinquishment of claims and the particular case pertained to bank loans.

xi. *Salim Footwear* is another Judgment of a Single Bench of this honorable Court and it stipulates that a tenant could not use or utilize not let thereto. This pronouncement does not aid the Appellant's case either.

19. For the reasoning stated herein above, we are of the opinion that the jurisdiction vested in the learned Single Judge has been properly exercised and that the Impugned Order does not suffer from any infirmity in so far as it dismisses the application under consideration and denies the grant of injunctive relief.

20. In so far as the maintainability of the Suit is concerned, it is apparent from a perusal of the plaint filed therein that damages have

been claimed in addition to the prayers of declaratory and injunctive relief. Dismissal of an application for interim injunctive relief does not per se translate into the entire suit being rendered non maintainable, especially in view of the factum that there is a prayer for damages. However, a determination thereupon on its own merits may be rendered by the learned Single Judge uninfluenced by any observation contained in the Impugned Order or herein.

21. As a result of the above the present appeal is hereby dismissed with no order as to costs.

JUDGE

JUDGE